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Washington, Wednesday, November 18, 1936

PRESIDENT OF THE UNITED STATES.

EXECUTIVE ORDER

TRANSFER OF PROPERTY, FUNCTIONS, FUNDS, ETC., PERTAINING TO RECREATIONAL DEMONSTRATION PROJECTS FROM THE RESETTLEMENT ADMINISTRATION TO THE SECRETARY OF THE INTERIOR

By virtue of and pursuant to the authority vested in me by Title II of the National Industrial Recovery Act (48 Stat. 200), the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the Emergency Relief Appropriation Act of 1936 (Public, No. 739, 74th Congress), I hereby order as follows:

1. There is transferred from the Resettlement Administration to the Secretary of the Interior (a) all the real and personal property or any interest therein, together with all contracts, options, rights and interests, books, papers, memoranda, records, etc., acquired by the Resettlement Administration in connection with the recreational demonstration projects set forth in the attached schedule with funds appropriated or made available to carry out the provisions of the National Industrial Recovery Act by the Fourth Deficiency Act, fiscal year 1933 (48 Stat. 274, 275), and by the Emergency Appropriation Act, fiscal year 1935 (48 Stat. 1055), and with funds appropriated by the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and by the Emergency Relief Appropriation Act of 1936 (Public No. 739, 74th Congress), and (b) all personnel, whether in the District of Columbia or elsewhere, now employed in connection with the acquisition of land for those recreational demonstration projects, together with all administration personnel records pertaining to the employees transferred, and to those employees engaged in development activities as of July 31, 1936, who were released by the Resettlement Administration on that date to permit the Department of the Interior to enter them on its rolls as of August 1.

2. There is transferred and allocated to the Secretary of the Interior all balances of appropriations heretofore made available to or allotted for expenditure by the Resettlement Administration both for acquiring land for the recreational demonstration projects set forth in the attached schedule and for developing those projects, under the said National Industrial Recovery Act, Fourth Deficiency Act, fiscal year 1933, Emergency Appropriation Act, fiscal year 1935, Emergency Relief Appropriation Act of 1935, and Emergency Relief Appropriation Act of 1936, to be used for the purposes for which such funds were made available or allotted to the Resettlement Administration. The Secretary of the Interior shall assume all outstanding obligations, commitments, and encumbrances heretofore incurred by the Resettlement Administration in connection with the said projects.

3. The Secretary of the Interior is authorized, through the National Park Service, to complete and administer the projects transferred to him by this Executive Order and to exercise with respect to any real or personal property or any interest therein, contracts, options, rights and interests, books, papers, memoranda, and records acquired in connection with such projects, all the powers and functions given to the Resettlement Administration in connection therewith by Executive Orders Nos. 7027 and 7028 of April 30, 1935, and April 30, 1935, respectively.

4. The Secretary of the Interior is authorized to prescribe such rules and regulations as may be necessary to carry out the administrative functions transferred and delegated to him by this Executive Order.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
November 14, 1936.

[No. 7496]

Schedule of Recreational Demonstration Projects

OP No.	*RA No.*	*Name*
65-11-24	LD-ME-2	Camden Hills
56-143	LP-ME-2	"
65-11-25	LD-ME-3	Acadia
56-144	LP-ME-3	"
65-25-340	LD-MD-4	Catoctin
56-147	LP-MD-4	"
65-13-145	LD-NH-1	Bear Brook
56-183	LP-NH-1	"
65-23-3466	LD-PA-6	Racoon Creek
56-232	LP-PA-6	"
65-23-3467	LD-PA-7	French Creek
56-233	LP-PA-7	"
65-23-3468	LD-PA-8	Laurel Hill
56-234	LP-PA-8	"
65-23-3469	LD-PA-11	Blue Knob
56-235	LP-PA-11	"
65-23-3470	LD-PA-12	Hickory Run
56-236	LP-PA-12	"
65-16-365	LD-RI-2	Beach Pond
56-238	LP-RI-2	"
65-51-3019	LD-MI-4	Waterloo
56-152	LP-MI-4	"
65-51-3020	LD-MI-6	Yankee Springs
56-153	LP-MI-6	"
65-71-4637	LD-MN-7	St. Croix
56-160	LP-MN-7	"
65-54-1683	LD-IL-5	Pere Marquette
56-126	LP-IL-5	"
65-52-2067	LD-IN-5	Versailles
56-129	LP-IN-5	"
65-52-2068	LD-IN-6	Winemac
56-130	LP-IN-6	"
65-55-2838	LD-MO-6	Lake of the Ozarks
56-167	LP-MO-6	"
65-55-2839	LD-MO-7	Cuivre River
56-168	LP-MO-7	"
65-55-2840	LD-MO-8	Montserrat
56-169	LP-MO-8	"
65-43-1491	LD-KY-4	Otter Creek
56-136	LP-KY-4	"
65-32-1133	LD-NC-8	Crabtree Creek
56-203	LP-NC-8	"
65-32-1134	LD-NC-11	Appalachian National Parkway (Blue Ridge Parkway)
56-204	LP-NC-11	"
65-44-1315	LD-TN-11	Montgomery Bell
56-266	LP-TN-11	"
65-44-1316	LD-TN-12	Shelby Forest Park
56-267	LP-TN-12	"

FEDERAL REGISTER

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Schedule of Recreational Demonstration Projects—Continued

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65-44-1317	LD-TN-13	Falls Creek Falls
56-268	LP-TN-13	"
65-31-1155	LD-VA-5	Swift Creek
56-277	LP-VA-5	"
65-31-1156	LD-VA-6	Chopawamsic
56-278	LP-VA-6	"
65-31-1158	LD-VA-7	Shenandoah National Park
56-279	LP-VA-7	"
65-31-1516	LD-VA-8	Appalachian National Park
56-280	LP-VA-8	"
65-31-1157	LD-VA-9	Bull Run
56-281	LP-VA-9	"
65-31-1159	LD-VA-13	Waysides
56-282	LP-VA-13	"
65-61-1184	LD-AL-11	Oak Mountain
56-96	LP-AL-11	"
65-34-3167	LD-GA-9	Hard Labor Creek
56-120	LP-GA-9	"
65-34-3168	LD-GA-11	Alex Stephens Memorial
56-121	LP-GA-11	"
65-34-3169	LD-GA-12	Pine Mountain
56-122	LP-GA-12	"
65-33-1838	LD-SC-7	Cheraw
56-243	LP-SC-7	"
65-33-1839	LD-SC-8	Kings Mountain
56-244	LP-SC-8	"
65-33-1840	LD-SC-12	Waysides
56-245	LP-SC-12	"
65-73-221	LD-ND-12	Roosevelt Park
56-216	LP-ND-12	"
65-74-1475	LD-SD-14	Badlands
56-259	LP-SD-14	"
65-74-1476	LD-SD-15	Custer Park
56-260	LP-SD-15	"
65-65-695	LD-OK-9	Lake Murray
56-225	LP-OK-9	"
65-03-1801	LD-CF-5	Mendocino Woodlands
56-104	LP-CF-5	"
65-83-245	LD-WY-2	Lake Guernsey
56-297	LP-WY-2	"
65-94-677	LD-OR-4	Silver Creek
56-299	LP-OR-4	"
65-65-932	LD-NM-14	White Sands
56-197	LP-NM-14	"

[F. R. Doc. 3400—Filed, November 16, 1936; 11:47 a. m.]

TREASURY DEPARTMENT.

Bureau of Internal Revenue.

[Regulations 94]

INCOME TAX UNDER THE REVENUE ACT OF 1936

[The Table of Contents, Chapter I (Introductory Provisions, Subtitle A of Title I), and Chapters II–IX (General Provisions, Subtitle B of Title I) Appeared in the Federal Register for Saturday, November 14, 1936. Chapters X–XXXIII (Supplemental Provisions, Subtitle C of Title I) Appeared in the Federal Register for Tuesday November 17, 1936]

CHAPTER XXXIV

Surtax on Personal Holding Companies

Title IA—Additional Income Taxes

SEC. 351. *Surtax on Personal Holding Companies.*—

(a) *Imposition of tax.*—There shall be levied, collected, and paid, for each taxable year (in addition to the taxes imposed by

Title I), upon the undistributed adjusted net income of every personal holding company a surtax equal to the sum of the following:

(1) 8 per centum of the amount thereof not in excess of $2,000; plus
(2) 18 per centum of the amount thereof in excess of $2,000 and not in excess of $100,000; plus
(3) 28 per centum of the amount thereof in excess of $100,000 and not in excess of $500,000; plus
(4) 38 per centum of the amount thereof in excess of $500,000 and not in excess of $1,000,000; plus
(5) 48 per centum of the amount thereof in excess of $1,000,000.

(b) *Definitions.*—As used in this title—

(1) The term "personal holding company" means any corporation (other than a corporation exempt from taxation under section 101, and other than a bank, as defined in section 104, and other than a life-insurance company or surety company) if—(A) at least 80 per centum of its gross income for the taxable year is derived from royalties, dividends, interest, annuities, and (except in the case of regular dealers in stock or securities) gains from the sale of stock or securities, and (B) at any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly, or indirectly, by or for not more than five individuals. For the purpose of determining the ownership of stock in a personal holding company—(C) stock owned, directly or indirectly, by a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries; (D) an individual shall be considered as owning, to the exclusion of any other individual, the stock owned, directly or indirectly, by his family, and this rule shall be applied in such manner as to produce the smallest possible number of individuals owning, directly or indirectly, more than 50 per centum in value of the outstanding stock; and (E) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(2) The term "undistributed adjusted net income" means the adjusted net income minus the sum of:

(A) 20 per centum of the excess of the adjusted net income over the amount of dividends received from personal holding companies which are allowable as a credit for the purposes of the tax imposed by section 13 or 204;
(B) Amounts used or set aside to retire indebtedness incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness; and
(C) The amount of the dividends paid credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to the dividend carry-over).

(3) The term "adjusted net income" means the net income minus the sum of:

(A) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction by section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law;
(B) Contributions or gifts, not otherwise allowed as a deduction, to or for the use of donees described in section 23 (o) for the purposes therein specified, including, in the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make any such contribution or gift, to the extent such liability of the decedent existed prior to January 1, 1934; and
(C) Losses from sales or exchanges of capital assets which are disallowed as a deduction by section 117 (d).

(4) The terms used in this section shall have the same meaning as when used in Title I.

(c) *Administrative provisions.*—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

(d) *Payment of surtax on pro rata shares.*—The tax imposed by this section shall not apply if (1) all the shareholders of the corporation include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the adjusted net income of the corporation for such year, and (2) 90 per centum or more of such adjusted net income is so included in the gross income of shareholders other than corporations. Any amount so included in the gross income of a shareholder shall be treated as a dividend received. Any subsequent distribution made by the corporation out of earnings or profits for such taxable year shall, if distributed to any shareholder who has so included in his gross income his pro rata share, be exempt from tax in the amount of the share so included.

(e) *Improper accumulation of surplus.*—For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see section 102.

ART. 351–1. *Surtax on personal holding companies.*—Section 351 of Title IA imposes (in addition to the taxes imposed by Title I) a graduated income tax or surtax upon corporations classified as personal holding companies. Corporations so classified are exempt from the surtax on corporations improperly accumulating surplus imposed by section 102 of Title I, but are not exempt from the other taxes imposed by that title. Unlike the surtax imposed by section 102, the surtax imposed by section 351 applies to all personal holding companies defined as such in article 351–2 regardless of whether or not they were formed or availed of to accumulate earnings or profits for the purpose of avoiding surtax upon shareholders.

A foreign corporation, whether resident or nonresident, which is classified as a personal holding company under section 351 (b) (1) and article 351–2, is subject to the tax imposed by section 351 with respect to its income from sources within the United States. (See section 119.)

ART. 351–2. *Classification of a personal holding company.*—A personal holding company is defined as any corporation (including foreign as well as domestic corporations not otherwise exempt), first 80 percent or more of whose gross income for the taxable year was derived from royalties, dividends, interest, annuities, and gains from the sale of stock or securities; and, second, more than 50 percent in value of whose outstanding stock was owned, directly or indirectly, at any time during the last half of the taxable year by or for not more than five individuals. The only corporations specifically exempt from this tax are as follows: (1) Corporations exempt from taxation under section 101 of Title I; (2) banks and trust companies, as defined in section 104; (3) life insurance companies; and (4) surety companies.

It is the nature of the gross income and the ownership of the outstanding stock which determine the classification as a personal holding company, and the several conditions with respect to both must be satisfied to bring a corporation within the classification. Gross income must be determined for the entire taxable year and the ownership of the stock outstanding must be determined according to its ownership at any time during the last half of the taxable year. Inasmuch as such circumstances can vary from year to year, a corporation may constitute a personal holding company for some years and not for other years. In that case, the surtax liability shall be determined under section 351 only for the years in which the corporation comes within the classification as a personal holding company.

The gross income for purposes of section 351 (b) (1) means (1) in the case of a domestic corporation its gross income as defined in sections 22, 204, and 207 of Title I and (2) in the case of a foreign corporation, whether resident or nonresident, its gross income from sources within the United States as defined and described in secton 119. Gross income is not synonymous with gross receipts. For example, in the case of a sale or exchange of property, it includes only the excess of the amount realized therefrom over the adjusted basis provided for in section 113 (b). It does not include gains which are not recognized under section 112 (b). In the case of a corporation reporting on the installment basis, it includes only that portion of the gain returnable as income under section 44. In the case of a manufacturing, merchandising, or mining business, "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. In determining gross income, subtractions shoud not be made for depreciation, depletion, selling expenses, or losses, or for items not ordinarily used in computing the cost of goods sold. Sales of capital assets as defined in section 117 must be treated as separate transactions and only those sales which individually resulted in profits shall be considered in determining the gains derived from such source. Gains from all transactions involving stock in trade, etc., are determined for the taxable year as a whole instead of separately.

From the standpoint of the nature of the gross income, a corporation comes within the definition of a personal holding company for any taxable year when 80 percent or more of its gross income for such taxable year was derived from the following sources:

(1) *Royalties.*—The term "royalties" includes amounts received for the use of or for the privilege of using patents, copyrights, secret processes and formulas, good will, trade

marks, trade brands, franchises, and other like property. It does not include rents, nor overriding royalties received by an operating company. As used in this paragraph the term "overriding royalties" means amounts received from a sublessee by the operating company which originally leased and developed the natural resource property in respect of which such overriding royalties are paid.

(2) *Dividends.*—The term "dividends" means dividends as defined in section 115 (a). It does not include stock dividends (to the extent they do not constitute income to the shareholders within the meaning of the sixteenth amendment to the Constitution), liquidating dividends, or other capital distributions referred to in section 115 (c) and (d).

(3) *Interest.*—The term "interest" means any amounts, includible in gross income under Title I, received for the use of money loaned.

(4) *Annuities.*—The term "annuities" refers only to annuities to the extent includible in the computation of gross income under Title I.

(5) *Gains from the sale of stock or securities.*—The term "gains from the sale of stock or securities" applies to all gains (including gains from liquidating dividends and other distributions from capital) from the sale or exchange of stock or securities includible in gross income under Title I. The term "stock or securities" includes shares or certificates of stock or interest in any corporation (including any joint-stock company, insurance company, association, or other organization classified as a corporation by the Act), certificates of interest or participation in any profit sharing agreement or in any oil, gas, or other mineral royalty or lease, collateral trust certificates, voting trust certificates, stock rights or warrants, bonds, debentures, certificates of indebtedness, notes, car trust certificates, bills of exchange, obligations issued by or on behalf of a Government, State, Territory, or a political subdivision thereof, etc. In the case of "regular dealers in stock or securities" the term does not include gains derived from the sale or exchange of stock or securities made in the normal course of business. The term "regular dealers in stock or securities" means corporations with an established place of business regularly engaged in the purchase of stock or securities and their resale to customers. Such corporations are not dealers with respect to stock or securities held for speculation or investment.

From the standpoint of the ownership of the outstanding stock, a corporation comes within the definition of a personal holding company for any taxable year if at any time during the last half of the taxable year more than 50 percent in value of the outstanding stock was owned, directly or indirectly, by or for not more than five individuals. The ownership of the stock shall be determined in accordance with the following rules:

(*a*) All forms and classes of stock, however denominated, which represent the interests of the shareholders, members, or beneficiaries in the corporation shall be taken into consideration. For the purpose of determining such ownership, the Act provides that stock owned, directly or indirectly, by a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. For example, if A and B, two individuals, are the exclusive but equal beneficiaries of a trust or estate, and, if such trust or estate owns the entire capital stock of the M Corporation, and, if the M Corporation in turn owns the entire capital stock of N Corporation, then the stock of both the M Corporation and the N Corporation shall be considered as being owned equally by A and B as the individuals owning the ultimate beneficial interests therein.

(*b*) The stock outstanding only during the last half of the taxable year shall be taken into consideration. However, and in the event of any change in the stock outstanding during such period, whether in the number of shares or classes of stock or whether in the ownership thereof, the conditions existing immediately prior and subsequent to each change must be taken into consideration, since a corporation comes within the classificatiorr of the statutory conditions with respect to stock ownership are present *at any time* during the period specified.

(*c*) The stock owned by an individual shall include all stock in the same corporation owned, directly or indirectly, by the members of his family. For this purpose the family of an individual shall include only his brothers and sisters (whether by the whole or halfblood), spouse, ancestors, and lineal descendants. The Act provides that this rule shall be applied in such manner as to produce the minimum possible number of individuals owning, directly or indirectly, more than 50 percent in value of the outstanding stock. For example, the M Corporation at some time during the last half of the taxable year had 1,800 shares of outstanding stock, 450 of which were held by various individuals having no relationship to one another and the remaining 1,350 were held by 50 shareholders having relationships and individual share holdings as follows:

Relationships	Shares	Shares	Shares	Shares	Shares
An individual	A, 110	B, 20	C, 20	D, 20	E, 20.
His father	AF, 10	BF, 10	CF, 10	DF, 10	EF, 10.
His wife	AW, 10	BW, 40	CW, 40	DW, 40	EW, 40.
His brother	AB, 10	BB, 10	CB, 10	DB, 10	EB, 10.
His son	AS, 10	BS, 40	CS, 40	DS, 40	ES, 40.
His daughter by former marriage (son's half-sister).	ASHS, 10.	BSHS, 40.	CSHS, 40.	DSHS, 40.	ESHS, 40.
His brother's wife	ABW, 10.	BBW, 10.	CBW, 10.	DBW, 160.	EBW, 10.
His wife's father	AWF, 10.	BWF, 10.	CWF, 110.	DWF, 10.	EWF, 10.
His wife's brother	AWB, 10.	BWB, 10.	CWB, 10.	DWB, 10.	EWB, 10.
His wife's brother's wife	AWBW, 10.	BWBW, 10.	CWBW, 10.	DWBW, 10.	EWBW, 110.

In the above example by applying the statutory rule, five individuals owned more than 50 percent of the outstanding stock as follows:

A (including AF, AW, AB, AS, ASHS)	160
B (including BF, BW, BB, BS, BSHS)	160
CW (including C, CS, CWF, CWB)	220
DB (including D, DF, DBW)	200
EWB (including EW, EWF, EWBW)	170
Total, or more than 50 percent	910

Individual A represents the obvious case where the head of the family owns the bulk of the family stock and naturally is the head of the group. Individual B represents the case where he is still head of the group because of the ownership of stock by his immediate family. Individuals C and D represent cases where the individuals fall in groups headed in C's case by his wife and in D's case by his brother because of the preponderance of holdings on the part of relatives by marriage. Individual E represents the case where the preponderant holdings of others eliminate that individual from the group.

(*d*) In determining whether the statutory conditions with respect to stock ownership are present at any time during the period specified, the phrase "in value" shall, in the light of all the circumstances, be deemed the value of the corporate stock outstanding at such time (not including treasury stock). This value may be determined upon the basis of the company's net worth, earning and dividend paying capacity, appreciation of assets, and any other factor having a bearing upon the value of the stock. If a value of stock is used which is greatly at variance with that reflected by the corporate books, the evidence upon which such valuation is based should be filed with the return. In any case where there are two or more classes of stock outstanding, the total value of all the stock should be allocated among the different classes according to the relative value of each class therein.

ART. 351–3. *Computation of undistributed adjusted net income.*—In ascertaining the tax basis for personal holding companies, the "adjusted net income" is first computed. This is accomplished in the case of a domestic corporation by subtracting from the corporate net income, as defined in Title I, the amount of (*a*) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction by section 23, but not including the tax imposed by section 351 or corresponding sections of prior Revenue Acts; (*b*) contributions or gifts not

otherwise allowed as a deduction to or for the use of donees described in section 23 (o) for the purposes therein specified, including, in the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make any such contribution or gift, to the extent such liability of the decedent existed prior to January 1, 1934; and (c) losses from sales or exchanges of capital assets which are disallowed as a deduction by section 117 (d). In the case of a foreign corporation, whether resident or nonresident, which files or causes a return to be filed, the "adjusted net income" means the net income from sources within the United States (gross income from sources within the United States as defined and described in section 119 less statutory deductions) minus the amount of the deductions enumerated in (*a*), (*b*), and (*c*), above. In the case of a foreign corporation, whether resident or nonresident, which files no return the "adjusted net income" means the gross income from sources within the United States as defined and described in section 119 less the deductions enumerated in (*a*), (*b*), and (*c*) above but without the benefit of any deductions under Title I. (See section 233.)

The "adjusted net income" includes interest upon obligations of the United States and obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States, except as provided in section 22 (b) (4). The "adjusted net income" does not include interest on obligations of States or Territories of the United States or any political subdivision thereof or of the District of Columbia or of the possessions of the United States.

The "undistributed adjusted net income" is computed by subtracting from the "adjusted net income" described above, (*a*) an amount equal to 20 percent of the excess of the adjusted net income over the amount of dividends received from personal holding companies which are allowable as a credit for the purpose of the tax imposed by section 13 or 204, (*b*) reasonable amounts used or set aside to retire indebtedness incurred by the taxpayer prior to January 1, 1934 (see article 351–4), and (*c*) the amount of the dividends paid credit allowed under section 27, computed without the benefit of subsection (b) thereof.

The foreign tax credit permitted by section 131 with respect to the taxes imposed by Title I is not allowed with respect to the surtax imposed by section 351. However, the deduction of foreign taxes under section 23 (c) is permitted for the purposes of the surtax even if for the purposes of the corporate tax imposed by Title I a credit for such taxes is taken.

ART. 351–4. *Amounts used or set aside to retire indebtedness incurred prior to January 1, 1934.*—If, pursuant to a bona fide plan for the retirement of its bonds, debentures, or similar obligations representing indebtedness incurred prior to January 1, 1934, for the purpose of raising capital (or assumed prior to that date in connection with the acquisition of capital assets by which such indebtedness is secured) the taxpayer—

(1) retires during the taxable year an amount of such indebtedness, or

(2) establishes a sinking fund or reserve for the retirement of such indebtedness during the taxable year, and sets aside in such fund or reserve an amount for the retirement of such indebtedness—

in determining the undistributed adjusted net income for the taxable year, a deduction from the adjusted net income is allowable in a reasonable amount in respect of the amount so paid or set aside in such fund or reserve during the taxable year.

The amount allowable as a deduction in any case must be reasonable, considering the nature, purposes, scope, conditions, amount, maturity, and other terms of the indebtedness. No deduction is allowable unless it appears, either from the covenants of the obligations or from a recognized business and accounting practice respecting the retirement of such indebtedness, that provision for retirement must be made out of earnings for the taxable year before distribution of such earnings may be made. The reasonableness of the deduction shall be determined by existing conditions known at the close of the taxable year. The fact that amounts have not been used or set aside in prior years will not entitle the taxpayer to deduct in any taxable year a greater amount than would otherwise be allowable. Amounts paid or set aside to discharge current liabilities for expenses, salaries, wages, taxes, interest, the purchase of any property for resale, dividends, balances due brokers, bank or other commercial loans, or any other current liability (whether represented by negotiable instruments, balances on account, or otherwise) do not constitute allowable deductions. This is true as respects liabilities which are payable at the convenience of either the debtor or the creditor, or on the demand of either.

No deduction will be permitted under this article with respect to any item for which a deduction is otherwise allowable under Title IA or Title I of the Act or under any applicable prior income tax Act.

A resolution, specifying the particular indebtedness to be retired, the plan of retirement, and the specific assets to be used for that purpose, passed by the board of directors or corresponding authority during the taxable period or prior thereto, will be considered sufficient to meet the statutory requirement that the amounts must be "set aside." A certified copy of such resolution must accompany the return on Form 1120H.

The burden of proof will rest upon the taxpayer to sustain the deduction claimed. Therefore, the taxpayer must furnish the information required by the return, and such other information as the Commissioner may require in substantiation of the deduction claimed.

ART. 351–5. *Computation of surtax.*—The following table shows the surtax due for taxable years beginning after December 31, 1935, upon certain specified amounts of undistributed adjusted net income. In each instance the first figure of the undistributed adjusted net income in the undistributed adjusted net-income column is to be excluded and the second figure included. The percentage given opposite applies to the excess of income over the first figure in the undistributed adjusted net-income column. The last column gives the total surtax on an undistributed adjusted net income equal to the second figure in the undistributed adjusted net-income column.

Personal Holding Company Surtax Table

Undistributed adjusted net income	Percent	Total surtax
$0 to $2,000	8	$160
$2,000 to $100,000	18	17,800
$100,000 to $500,000	28	129,800
$500,000 to $1,000,000	38	319,800
$1,000,000 up	48	--

The surtax for any amount of undistributed adjusted net income not shown in the table is computed by adding to the surtax for the largest amount shown which is less than the undistributed adjusted net income, the surtax upon the excess over that amount at the rate indicated in the table. Accordingly, the surtax due for taxable years beginning after December 31, 1935, upon an undistributed adjusted net income of $150,000 would be $31,800, computed as follows:

Tax on $100,000 from table	$17,800
Tax on $50,000 at 28 percent	14,000
Total	31,800

ART. 351–6. *Illustration of computation of undistributed adjusted net income and surtax.*—The method of computation of the adjusted net income and undistributed adjusted net income as outlined in article 351–3 may be illustrated as follows:

The M Corporation, a personal holding company, finds the following facts relating to 1936:

(*a*) The net income, as computed under Title I, amounts to $150,000.

(*b*) Dividends received from another personal holding company amount to $25,000.

(*c*) Federal income tax (including the surtax under section 14 of the Act but not including excess-profits tax imposed by section 106 of the Revenue Act of 1935) aggregates $15,000.

(*d*) Contributions or gifts not otherwise allowed as a deduction, to or for the use of donees described in section 23 (o) for the purposes therein specified, amount to $1,000.

(*e*) No gains from sales or exchanges of capital assets were realized during the year but losses in the amount of $11,000 were sustained, of which only $2,000 was allowed under section 117 (d) as a deduction in computing the taxable net income, thus leaving a balance of $9,000 of the $11,000 item of capital losses not allowable as a deduction from 1936 gross income.

The "adjusted net income" of the M Corporation, as contemplated in section 351 (b) (3), is as follows:

From the net income ($150,000) should be subtracted the aggregate of the above items, $15,000, $1,000, and $9,000 (a total of $25,000), which leaves a resulting "adjusted net income" of $125,000.

In addition to the above-stated facts, the M Corporation set aside $5,000 of its "adjusted net income" ($125,000) to apply toward the retirement of its bonded indebtedness of $50,000 incurred prior to January 1, 1934; and also distributed to its shareholders $50,000 as dividends during the taxable year 1936.

In determining the "undistributed adjusted net income", as contemplated in section 351 (b) (2), there will be subtracted from the "adjusted net income" ($125,000), the $75,000 aggregate sum of the following items: (*a*) 20 percent of the $100,000 excess of the $125,000 adjusted net income over the $25,000 dividend income received during the year from another personal holding company, 20 percent of $100,000 or $20,000; (*b*) the $5,000 item set aside to apply toward the retirement of its bonded indebtedness of $50,000, incurred prior to January 1, 1934; and (*c*) the $50,000 of dividends distributed to its shareholders during the taxable year 1936. This leaves $50,000 ($125,000 less $75,000) as the "undistributed adjusted net income", contemplated in section 351 (b) (2), on which the 8 percent and the 18 percent surtax rates of brackets (1) and (2) of section 351 (a) apply, making the 1936 surtax of the M Corporation, $8,800.

ART. 351–7. *Payment of surtax on pro rata shares.*—The surtax imposed by section 351 does not apply to any taxable year if (1) all the shareholders of the corporation, that is, every shareholder of record as of the last day of the taxable year, include at the time of filing their returns, in their gross income their entire pro rata shares, whether distributed or not, of the adjusted net income of the corporation for the taxable year of such corporation ending with or during their taxable years (amended returns for such purpose may not be used) and (2) 90 percent or more of the corporation's adjusted net income is included in the gross income of shareholders other than corporations—i. e., taxpayers subject to normal tax and surtax on individuals. Thus if the adjusted net income were $100,000 and other corporations, shareholders of record as of the last day of the taxable year, owned in the aggregate 11 percent of the stock in the taxpayer corporation, the pro rata shares of shareholders other than corporations would be $89,000. Since such sum would be less than 90 percent of the adjusted net income the election of the shareholders to be taxed under section 351 (d) would not be available. If all the shareholders elect to adopt this alternative method, the pro rata shares of the corporation's adjusted net income so included in the gross income of a shareholder shall be treated as a dividend received, and any subsequent distribution made by the corporation out of the earnings or profits for such taxable year shall, if distributed to any shareholder who has so included in his gross income his distributive share, be exempt from tax in the amount of the share so included.

The tax imposed by section 351 is in addition to, and is separate and distinct from, the normal tax imposed by section 13 and the surtax imposed by section 14, both of which apply notwithstanding the election of all the shareholders, under section 351 (d), to include in their gross income their entire pro rata share of the adjusted net income of the corporation.

ART. 351–8. *Return and payment of tax.*—A separate return is required for the surtax imposed under section 351. Such return shall be made on Form 1120H. In the case of a personal holding company which is a domestic corporation, the return is required to be made within the time prescribed in section 53 and in the case of a foreign corporation within the time prescribed in section 235. The tax shown by the corporation on its return must be paid in the case of a domestic corporation within the time prescribed in section 56 and in the case of a foreign corporation within the time prescribed in section 236. The same provisions of law relating to the period of limitation for assessment and collection which govern the taxes imposed by Title I also apply to the surtax imposed under Title IA. However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed under Title IA. If the corporation subject to section 351 fails to make a return, the tax may be assessed at any time. If the Commissioner finds a deficiency in respect of the tax imposed by section 351, he is required to follow the same procedure which applies to deficiencies in income tax under Title I. The penalties applicable to the income taxes imposed under Title I, as well as the provisions of Title I relating to interest and additions to the tax, also apply to the surtax imposed by section 351. The administrative provisions applicable to the surtax imposed by section 351 are not confined to those contained in Title I but embrace all administrative provisions of law which have any application to income taxes.

ART. 351–9. *Determination of tax, assessment, collection.*—The determination, assessment, and collection of the tax imposed by section 351, and the examination of returns and claims in connection therewith, will be made under such procedure as may be prescribed from time to time by the Commissioner.

CHAPTER XXXV

General Provisions—Definitions

Title VIII—General Provisions

SEC. 1001. *Definitions.*—

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(3) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(4) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 143 or 144.

(8) The term "stock" includes the share in an association, joint-stock company, or insurance company.

(9) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(10) The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(11) The term "Secretary" means the Secretary of the Treasury.

(12) The term "Commissioner" means the Commissioner of Internal Revenue.

(13) The term "collector" means collector of internal revenue.

(14) The term "taxpayer" means any person subject to a tax imposed by this Act.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

ART. 1001–1. *Classification of taxables.*—For the purpose of taxation the Act makes its own classification and prescribes its own standards of classification. Local law is of no importance in this connection. Thus a trust may be classed as a trust or as an association (and, therefore, as a corporation), depending upon its nature or its activities. (See article 1001–3.) The term "partnership" is not limited to the common law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. (See article 1001–4.) The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, an insurance company, and certain kinds of partnerships. (See articles 1001–2 and 1001–4.) The definitions, terms, and classifications, as set forth in section 1001, shall have the same respective meaning and scope in these regulations.

ART. 1001–2. *Association.*—The term "association" is not used in the Act in any narrow or technical sense. It includes any organization, created for the transaction of designated affairs, or the attainment of some object, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint-stock association or company, a "business" trust, a "Massachusetts" trust, a "common law" trust, an "investment" trust (whether of the fixed or the management type), an interinsurance exchange operating through an attorney in fact, a partnership association, and any other type of organization (by whatever name known) which is not, within the meaning of the Act, a trust or an estate, or a partnership. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

ART. 1001–3. *Association distinguished from trust.*—The term "trust", as used in the Act, refers to an ordinary trust, namely, one created by will or by declaration of the trustees or the grantor, the trustees of which take title to the property for the purpose of protecting or conserving it as customarily required under the ordinary rules applied in chancery and probate courts. The beneficiaries of such a trust generally do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. Even though the beneficiaries do create such a trust, it is ordinarily done to conserve the trust property without undertaking any activity not strictly necessary to the attainment of that object.

As distinguished from the ordinary trust described in the preceding paragraph is an arrangement whereby the legal title to the property is conveyed to trustees (or a trustee) who, under a declaration or agreement of trust, hold and manage the property with a view to income or profit for the benefit of beneficiaries. Such an arrangement is designed (whether expressly or otherwise) to afford a medium whereby an income or profit-seeking activity may be carried on through a substitute for an organization such as a voluntary association or a joint-stock company or a corporation, thus obtaining the advantages of those forms of organization without their disadvantages. The nature and purpose of a cooperative undertaking will differentiate it from an ordinary trust. The purpose will not be considered narrower than that which is formally set forth in the instrument under which the activities of the trust are conducted.

If a trust is an undertaking or arrangement conducted for income or profit, the capital or property of the trust being supplied by the beneficiaries, and if the trustees or other designated persons are, in effect, the managers of the undertaking or arrangement, whether the beneficiaries do or do not appoint or control them, the beneficiaries are to be treated as voluntarily joining or cooperating with each other in the trust, just as do members of an association, and the undertaking or arrangement is deemed to be an association classified by the Act as a corporation. However, the fact that the capital or property of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association.

By means of such a trust the disadvantages of an ordinary partnership are avoided, and the trust form affords the advantages of unity of management and continuity of existence which are characteristic of both associations and corporations. This trust form also affords the advantages of capacity, as a unit, to acquire, hold, and dispose of property and the ability to sue and be sued by strangers or members, which are characteristic of a corporation; and also frequently affords the limitation of liability and other advantages characteristic of a corporation. These advantages which the trust form provides are frequently referred to as resemblance to the general form, mode of procedure, or effectiveness in action, of an association or a corporation, or as "quasi-corporate form." The effectiveness in action in the case of a trust or of a corporation does not depend upon technical arrangements or devices such as the appointment or election of a president, secretary, treasurer, or other "officer", the use of a "seal", the issuance of certificates to the beneficiaries, the holding of meetings by managers or beneficiaries, the use of a "charter" or "by-laws", the existence of "control" by the beneficiaries over the affairs of the organization, or upon other minor elements. They serve to emphasize the fact that an organization possessing them should be treated as a corporation, but they are not essential to such classification, for the fundamental benefits enjoyed by a corportion, as outlined above, are attained, in the case of a trust, by the use of the trust form *itself*. The Act disregards the technical distinction between a trust agreement (or declaration) and ordinary articles of association or a corporate charter, and all other differences of detail. It treats such a trust according to its essential nature, namely, as an association. This is true whether the beneficiaries form the trust or, by purchase or otherwise, acquire an interest in an existing trust.

The mere size or amount of capital invested in the trust is of no importance. Sometimes the activity of the trust is a small venture or enterprise, such as the division and sale of a parcel of land, the erection of a building, or the care and rental of an office building or apartment house; sometimes the activity is a trade or business on a much larger scale. The distinction is that between the activity or purpose for which an ordinary strict trust of the traditional type would be created, and the activity or purpose for which a corporation for profit might have been formed.

ART. 1001–4. *Partnerships.*—The Act provides its own concept of a partnership. Under the term "partnership" it includes not only a partnership as known at common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation, or venture, and which is not, within the meaning of the Act, a trust, estate, or a corporation. On the other hand the Act classifies under the term "corporation" an association or joint-stock company, the members of which may be subject to the personal liability of partners. If an organization is not interrupted by the death of a member or by a change in ownership of a participating interest during the agreed period of its existence, and its management is centralized in one or more persons in their representative capacities, such an organization is an association, taxable as a corporation. As to the characteristics of an association, see also article 1001–2 and 1001–3. The following examples will illustrate some phases of these distinctions:

(1) If A and B buy some acreage for the purpose of subdivision, they are joint adventurers, and the joint venture is classified by the Act as a partnership.

(2) A, B, and C each contributes $10,000 for the purpose of buying and selling real estate. If A, B, C, or D, an outside party (or any combination of them as long as the approval of each participant is not required for syndicate action), takes control of the money, property, and business of the enterprise,

and the syndicate is not terminated on the death of any of the participants, the syndicate is classified as an association.

ART. 1001–5. *Limited partnership as corporation.*—Limited partnerships of the type of partnerships with limited liability or partnership associations authorized by the statutes of Michigan, Pennsylvania, and a few other States are only nominally partnerships. Such so-called limited partnerships, offering opportunity for limiting the liability of all the members, providing for the transferability of partnership shares, or having other material characteristics of corporate form, must make returns of income and pay the tax as corporations. In all doubtful cases limited partnerships will be treated as corporations unless they submit satisfactory proof that they are not in effect so organized.

ART. 1001–6. *Limited partnership as partnership.*—Limited partnerships of the type authorized by the statutes of New York and many other States are ordinarily partnerships and not corporations within the meaning of the Act. Such limited partnerships, which can not limit the liability of the general partners, although the special partners enjoy limited liability so long as they observe the statutory conditions, which are dissolved by the death or attempted transfer of the interest of a general partner, and which can not take real estate or sue in the partnership name, are so like common law partnerships as to render impracticable any differentiation in their treatment for tax purposes.

ART. 1001–7. *Insurance company.*—Insurance companies include both stock and mutual companies, as well as mutual benefit insurance companies. A voluntary unincorporated association of employees formed for the purpose of relieving sick and aged members and the dependents of deceased members is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer. A corporation which merely sets aside a fund for the insurance of its employees is not required to file a separate return for such fund, but the income therefrom shall be included in the return of the corporation.

ART. 1001–8. *Domestic, foreign, resident, and nonresident persons.*—A domestic corporation is one organized or created in the United States, including only the States, the Territories of Alaska and Hawaii, and the District of Columbia, or under the law of the United States or of any State or Territory, and a foreign corporation is one which is not domestic. A domestic corporation is a resident corporation even though it does no business and owns no property in the United States. A foreign corporation engaged in trade or business within the United States or having an office or place of business therein is referred to in these regulations as a resident foreign corporation, and a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein, as a nonresident foreign corporation. A partnership engaged in trade or business within the United States or having an office or place of business therein is referred to in these regulations as a resident partnership, and a partnership not engaged in trade or business within the United States and not having any office or place of business therein, as a nonresident partnership. Whether a partnership is to be regarded as resident or nonresident is not determined by the nationality or residence of its members or by the place in which it was created or organized. The term "nonresident alien," as used in these regulations, includes a nonresident alien individual and a nonresident alien fiduciary.

ART. 1001–9. *Fiduciary.*—"Fiduciary" is a term which applies to persons that occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary for income tax purposes is a person who holds in trust an estate to which another has the beneficial title or in which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or guardian of the property of an incompetent person is a fiduciary.

ART. 1001–10. *Fiduciary distinguished from agent.*—There may be a fiduciary relationship between an agent and a principal, but the word "agent" does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Act. In cases where no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

SEC. 1002. *Separability Clause.*—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 1003. *Effective Date of Act.*—Except as otherwise provided, this Act shall take effect upon its enactment.

Approved, June 22, 1936, 9 p. m.

ART. 1003–1. *Effective date of Act.*—The Act was approved June 22, 1936, 9 p. m., eastern standard time.

In pursuance of the Act the foregoing regulations are hereby prescribed and the regulations heretofore issued under Title I and Title IA are hereby superseded.

[SEAL.] CHAS. T. RUSSELL,
Acting Commissioner of Internal Revenue.

Approved, November 12, 1936.

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

APPENDIX

CERTAIN GENERAL PROVISIONS OF LAW AND REGULATIONS APPLICABLE TO THE TAX IMPOSED ON NET INCOME BY TITLES I AND IA OF THE REVENUE ACT OF 1936, AND EXCESS-PROFITS TAX REGULATIONS UNDER THE REVENUE ACT OF 1935, AS AMENDED

Adjustments of Carriers' Tax Liabilities to Conform to Recapture Payments

PARAGRAPH 1. The Interstate Commerce Commission shall, as soon as practicable after its order with respect to the amount recoverable from any carrier under the provisions of section 15a of the Interstate Commerce Act, as amended, for any year or portion thereof has become final, and such amount, if any, has been paid, certify to the Commissioner of Internal Revenue the amount so paid. If the amount so paid by such carrier differs from the amount allowed as so recoverable in computing the income or excess profits tax liabilities for any taxable period of such carrier, or of any corporation whose income or excess profits tax liability is affected, the Commissioner of Internal Revenue shall determine any deficiency or overpayment attributable to such difference. Notwithstanding any other provisions of law, (1) any such deficiency may be assessed within two years from the date of such certification, and, if so assessed, shall be paid upon notice and demand from the collector, and (2) any such overpayment may be credited or refunded within two years from the date of such certification, but not after unless, before the expiration of such period, a claim therefor is filed. This section shall not be held to affect the provisions of section 1106 (b) of the Revenue Act of 1926 or 606 of the Revenue Act of 1928. (Section 1107, Revenue Act of 1932.)

Administrative Review

PAR. 2. In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the Commissioner upon (or in case the Secretary is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal-revenue laws shall not, except as provided in Title IX, of the Revenue Act of 1924, as amended, be subject to review by any other administrative or accounting officer, employee, or agent of the United States. (Section 1107, Revenue Act of 1926.)

Board of Tax Appeals

Membership

PAR. 3. The Board of Tax Appeals (hereinafter referred to as the "Board") is hereby continued as an independent agency in the Executive Branch of the Government. The Board shall be composed of 16 members; except that such limitation shall not be held applicable to any member holding office under an appointment made before the enactment of the Revenue Act of 1926, in accordance with the law in force prior to the enactment of such Act. (Section 900, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

PAR. 4. (a) Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. Members of the Board may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause. Each member shall receive salary at the rate of $10,000 per annum.

(b) The terms of office of all members who are to compose the Board prior to June 2, 1926, shall expire at the close of business on June 1, 1926. The terms of office of the sixteen members first taking office after such date shall expire, as designated by the President at the time of nomination, four at the end of the sixth year, four at the end of the eighth year, four at the end of the tenth year, and four at the end of the twelfth year, after June 2, 1926. The terms of office of all successors shall expire twelve years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. (Section 901, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

PAR. 5. A member of the Board removed from office in accordance with subdivision (a) of section 901 shall not be permitted at any time to practice before the Board. (Section 902, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Organization and Procedure

PAR. 6. The Board shall at least biennially designate a member to act as chairman. The Board shall have a seal which shall be judicially noticed. (Section 903, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

The Board and its divisions shall have such jurisdiction as is conferred on them by Title II and Title III of the Revenue Act of 1926 or by subsequent laws. The Board is authorized to impose a fee in an amount not in excess of $10 to be fixed by the Board for the filing of any petition for the redetermination of a deficiency after the enactment of the Revenue Act of 1926 and for the hearing of any proceeding pending at the time of such enactment. (Section 904, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

A majority of the members of the Board or of any division thereof shall constitute a quorum for the transaction of the business of the Board or of the division, respectively. A vacancy in the Board or in any division thereof shall not impair the powers nor affect the duties of the Board or division nor of the remaining members of the Board or division, respectively. (Section 905, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

PAR. 7. (a) The chairman may from time to time divide the Board into divisions of one or more members, assign the members of the Board thereto, and in case of a division of more than one member, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a member assigned thereto to serve thereon, is composed of less than the number of members designated for the division, the chairman may assign other members to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of members thereto. A division shall hear, and make a determination upon, any proceeding instituted before the Board and any motion in connection therewith, assigned to such division by the chairman, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) The report of the division shall become the report of the Board within 30 days after such report by the division, unless within such period the chairman has directed that such report shall be reviewed by the Board. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Board except in accordance with such rules as the Board may prescribe. The report of a division shall not be a part of the record in any case in which the chairman directs that such report shall be reviewed by the Board.

(c) If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Board dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Commissioner. An order specifying such amount shall be entered in the records of the Board unless the Board can not determine such amount from the record in the proceeding or unless the dismissal is for lack of jurisdiction.

(d) A decision of the Board (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Board. If the Board dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Commissioner, or if the Board dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Board, and the decision of the Board shall be held to be rendered upon the date of such entry.

(e) If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Board to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) The findings of the Board made in connection with any decision prior to the enactment of the Revenue Act of 1926 shall, notwithstanding the enactment of such Act, continue to be prima facie evidence of facts therein stated. (Section 906, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926, and amended by section 601, Revenue Act of 1928.)

PAR. 8. (a) Notice and opportunity to be heard upon any proceeding instituted before the Board shall be given to the taxpayer and the Commissioner, and a report upon the proceeding and a decision thereon shall be made as quickly as practicable. The decision shall be made by a member in accordance with the report of the Board, and such decision so made shall, when entered, be the decision of the Board. If an opportunity to be heard upon the proceeding is given before a division of the Board, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Board upon review, except upon a specific order of the chairman. Hearings before the Board and its divisions shall be open to the public, and the testimony and, if the Board so requires, the argument shall be stenographically reported. The Board is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Board and to other persons and agencies. The proceedings of the Board and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Board may prescribe and in accordance with the rules of evidence applicable in courts of equity of the District of Columbia. In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, where no hearing has been held before the enactment of the Revenue Act of 1928, the burden of proof in respect of such issue shall be upon the Commissioner. The mailing by registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Board shall be held sufficient service of such pleading, decision, order, notice, or process.

(b) It shall be the duty of the Board and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Board shall report in writing all its findings of fact, opinions, and memorandum opinions.

(c) All reports of the Board and all evidence received by the Board and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Board in any proceeding has become final the Board may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Board or any division; or the Board may, on its own motion, make such other disposition thereof as it deems advisable.

(d) The Board shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Board therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

(e) The principal office of the Board shall be in the District of Columbia, but the Board or any of its divisions may sit at any place within the United States. The times and places of the meetings of the Board and of its divisions shall be prescribed by the chairman with a view to securing reasonable opportunity to taxpayers to appear before the Board or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

(f) The Secretary of the Treasury shall provide the Board with suitable rooms in courthouses or other buildings when necessary for hearings by the Board, or any division thereof, outside the District of Columbia.

(g) When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending after the date of the enactment of the Revenue Act of 1934 before any appellate court reviewing the action of the Board. (Section 907, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926, and amended by section 601, Revenue Act of 1928, subsection (g) being added by section 516, Revenue Act of 1934.)

Witnesses

PAR. 9. For the efficient administration of the functions vested in the Board or any division thereof, any member of the Board, or any employee of the Board designated in writing for the purpose by the chairman, may administer oaths, and any member of the Board may examine witnesses and require, by subpoena ordered by the Board or any division thereof and signed by the member, (1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or (2) the taking of a deposition before any designated individual competent to administer oaths under this Act. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent. (Section 908, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

(a) Any witness summoned or whose deposition is taken under section 908 shall receive the same fees and mileage as witnesses in courts of the United States. Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) In the case of witnesses for the Commissioner, such payments shall be made by the Secretary out of any moneys appropriated for the collection of internal-revenue taxes, and may be made in advance.

(2) In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Board, by the party at whose instance the witness appears or the deposition is taken.

(b) This section shall take effect as of June 2, 1924, in the case of fees, mileage, or expenses accrued prior to, but remaining unpaid at the time of, the enactment of the Revenue Act of 1926. (Section 909, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Expenditures and Personnel

PAR. 10. The members of the Board shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the Board of General Appraisers. The employees of the Board shall receive their necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, in an amount not to exceed $5 per day. The Board is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1923 to fix the compensation of, such employees, and to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Board. All expenditures of the Board shall be allowed and paid, out of any moneys appropriated for the purposes of the Board, upon presentation of itemized vouchers therefor signed by the chairman. All fees received by the Board shall be covered into the Treasury as miscellaneous receipts. Section 3709 of the Revised Statutes of the United States shall not be construed to apply to any purchase or service rendered for the Board when the aggregate amount involved does not exceed the sum of $25. (Section 910, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Frivolous Appeals

PAR. 11. Whenever it appears to the Board that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of $500 shall be awarded to the United States by the Board in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax. (Section 911, Revenue Act of 1924, as added by section 1000, Revenue Act of 1926.)

Transferee Proceedings

Burden of proof—preliminary examination

PAR. 12. In proceedings before the Board the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. (Section 912, Revenue Act of 1924, as added by section 602, Revenue Act of 1928.)

Upon application to the Board, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Board, to a preliminary examination of books, papers, documents, correspondence, and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Board for the redetermination of his liability in respect of the tax (including interest, penalties, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application the Board may require by subpoena, ordered by the Board or any division thereof and signed by a member, the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Board or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding transferee and will not result in undue hardship to the tax-

payer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena. (Section 913, Revenue Act of 1924, as added by section 602, Revenue Act of 1928.)

Review of Board's Decision by Courts

PAR. 13. (a) The decision of the Board rendered after the enactment of this Act (except as provided in subdivision (j) of section 283 and in subdivision (h) of section 318) may be reviewed by a Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, as hereinafter provided, if a petition for such review is filed by either the Commissioner or the taxpayer within three months after the decision is rendered.

(b) Such courts are authorized to adopt rules for the filing of such petition, the preparation of the record for review, and the conduct of proceedings upon such review and, until the adoption of such rules, the rules of such courts relating to appellate proceedings upon a writ of error, so far as applicable, shall govern.

(c) Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, such review shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Board unless a petition for review in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer (1) on or before the time his petition for review is filed has filed with the Board a bond in a sum fixed by the Board not exceeding double the amount of the portion of the deficiency in respect of which the petition for review is filed, and with surety approved by the Board, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or (2) has filed a jeopardy bond under the income or estate tax laws. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Board is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Board is disallowed in whole or in part by the court, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated.

(e) Nothing in subdivision (c) shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review. (Section 1001, Revenue Act of 1926, as amended by section 603, Revenue Act of 1928, and by section 1101, Revenue Act of 1932.)

Venue

PAR. 14. (a) Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia.

(b) Notwithstanding the provisions of subsection (a), such decision may be reviewed by any Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing. (Section 1002, Revenue Act of 1926, as amended by section 519, Revenue Act of 1934.)

PAR. 15. (a) The Circuit Courts of Appeals and the Court of Appeals of the District of Columbia shall have exclusive jurisdiction to review the decisions of the Board (except as provided in section 239 of the Judicial Code, as amended); and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 240 of the Judicial Code, as amended.

(b) Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision of the Board, with or without remanding the case for a rehearing, as justice may require. (Section 1003, Revenue Act of 1926.)

(a) The Circuit Courts of Appeals, the Court of Appeals of the District of Columbia, and the Supreme Court shall have power to impose damages in any case where the decision of the Board is affirmed and it appears that the petition was filed merely for delay.

(b) The Board is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof. (Section 1004, Revenue Act of 1926, as amended by section 1102, Revenue Act of 1932.)

Date When Board's Decision Becomes Final

PAR. 16. (a) The decision of the Board shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the Circuit Court of Appeals and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the Circuit Court of Appeals; or

(4) Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Board be affirmed or the petition for review dismissed.

(b) If the Supreme Court directs that the decision of the Board be modified or reversed, the decision of the Board rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(c) If the decision of the Board is modified or reversed by the Circuit Court of Appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the Court has been affirmed by the Supreme Court, then the decision of the Board rendered in accordance with the mandate of the Circuit Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Board was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(d) If the Supreme Court orders a rehearing; or if the case is remanded by the Circuit Court of Appeals to the Board for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the Board rendered upon such rehearing shall become final in the same manner as though no prior decision of the Board had been rendered.

(e) As used in this section—

(1) The term "Circuit Court of Appeals" includes the Court of Appeals of the District of Columbia;

(2) The term "mandate", in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate. (Section 1005, Revenue Act of 1926.)

Closing Agreements

PAR. 17. (a) *Authorization.*—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commis-

sioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) *Finality of agreements.*—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(c) Section 1106 (b) of the Revenue Act of 1926 is repealed, effective on the expiration of 30 days after the enactment of this Act, but such repeal shall not affect any agreement made before such repeal takes effect. (Section 606, Revenue Act of 1928.)

PAR. 18. Closing agreements provided for in section 606 may relate to any taxable period ending prior to the date of the agreement. Such an agreement may be executed even though under such agreement the taxpayer is not liable for any tax for the period. The matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer. For example, an agreement may be entered into with respect to the amount of gross income, to deductions for losses, depreciation, depletion, etc., or to the value of property on a basic date. Accordingly, there may be a series of agreements relating to the tax liability for a single taxable period. Any tax or deficiency in tax determined pursuant to such an agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of the Act. (Article 1301, Regulations 74.)

Collection of Taxes

Acceptance of Treasury Bills, Treasury Certificates, and Treasury Notes

PAR. 19. Collectors of internal revenue are authorized and directed to receive, at par or dollar face amount, in payment of income and profits taxes which the taxpayer is required to pay on the date of maturity of the bills, certificates or notes, respectively, that is, taxes due for the first time on that date and which would be overdue thereafter, Treasury bills, Treasury certificates of indebtedness, and Treasury notes, the maturity dates of which are the 15th day of any calendar month, and which according to the express terms of their issue are made acceptable in payment of income and profits taxes. Collectors are not authorized hereunder to receive in payment of taxes any Treasury bills, Treasury certificates of indebtedness, or Treasury notes which are not according to the express terms of their issue made acceptable in payment of taxes, nor any such bills, certificates, or notes which mature on a date other than the date on which the taxes, in payment of which the bills, certificates, or notes, respectively, are tendered, are required to be paid. When the taxes are due on Sunday, the bills, certificates, or notes in payment thereof may be accepted on the following day. In all other cases collectors are authorized to receive Treasury bills, Treasury certificates of indebtedness, and Treasury notes in payment of income and profits taxes only on the date of maturity of the bills, certificates, or notes, or within a reasonable time immediately prior thereto. All interest coupons attached to Treasury certificates of indebtedness and Treasury notes shall be detached by the taxpayer before presentation to the collector and collected in ordinary course when due. Receipts given by collectors to taxpayers shall show the description of the bills, certificates, or notes received in payment of taxes, including the exact dollar face amount thereof, and that the bills, certificates, or notes, respectively, are tendered by the taxpayer and received by the collector, subject to no condition, qualification, or reservation whatsoever, in payment of no more than an amount of taxes equal to such dollar face amount. Collectors shall in no case pay interest on the bills, certificates, or notes, or accept them for an amount less or greater than their dollar face amount. If any bills, certificates of indebtedness, or notes are offered in payment of income or profits taxes subject to any condition, qualification, or reservation whatsoever, or for any greater amount than the par or dollar face amount thereof, they will not be deemed to be duly tendered and the collectors shall refuse any such offer and return the bills, certificates of indebtedness, or notes, respectively, to the taxpayer immediately. (Article 1, T. D. 4703, approved November 3, 1936.)

PAR. 20. For the purpose of saving taxpayers the expense of transmitting such bills, certificates, or notes as are held in Federal reserve cities or Federal reserve branch bank cities to the office of the collector in whose district the taxes are payable, taxpayers desiring to pay income and profits taxes by such Treasury bills, Treasury certificates of indebtedness, or Treasury notes acceptable in payment of taxes, should communicate with the collector of the district in which the taxes are payable and request from him authority to deposit such bills, certificates, or notes with the Federal reserve bank in the city in which the bills, certificates, or notes are held. Collectors are authorized to permit deposits of Treasury bills, Treasury certificates of indebtedness, or Treasury notes in any Federal reserve bank, with the express understanding that the Federal reserve bank is to issue a certificate of deposit in the collector's name covering the dollar face amount of the bills, certificates, or notes, and to state on the face of the certificate of deposit that the amount represented thereby is in payment of an equal dollar amount of income or profits taxes. The Federal reserve bank should forward the original certificate of deposit to the Treasurer of the United States with its daily transcript, and transmit the duplicate to the Commissioner of Internal Revenue, Accounts and Collections Unit, Washington, D. C., and the triplicate to the collector, accompanied by a statement giving the name of the taxpayer for whom the payment is made, in order that the collector may make the necessary record. Receipts given by the Federal reserve banks to the taxpayers for the bills, certificates, or notes deposited by such taxpayers should show the description of such bills, certificates, or notes received in payment of taxes, including the exact dollar face amount thereof, and that the bills, certificates, or notes, respectively, are tendered by the taxpayer and received by the Federal reserve bank, subject to no condition, qualification, or reservation whatsoever, in payment of no more than an amount of taxes equal to such dollar face amount. (Article 2, in part, T. D. 4703, approved November 3, 1936.)

Checks in Payment of Taxes

PAR. 21. It shall be lawful for collectors of internal revenue to receive for internal taxes and all public dues certified checks drawn on National and State banks and trust companies during such time and under such regulations as the Secretary of the Treasury may prescribe. No person, however, who may be indebted to the United States on account of internal taxes who shall have tendered a certified check or checks as provisional payment for such duties or taxes, in accordance with the terms of this section, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption

of the circulating notes of such bank. (Act of March 2, 1911, chapter 191, section 1; Act of March 3, 1913, chapter 119; section 109, Title 26, U. S. Code.)

Payment of and Receipt for Taxes

PAR. 22. (a) Collectors may receive, at par with an adjustment for accrued interest, notes or certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

(b) Every collector to whom any payment of any income tax is made shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made; and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt. (Section 1118, in part, Revenue Act 1926.)

Receipts for Payment

PAR. 23. It shall be the duty of the collectors or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax. (Section 3183, Revised Statutes, as amended by chapter 125, section 3, Act of March 1, 1879.)

Suits to Restrain, Barred

PAR. 24. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (Section 3224, Revised Statutes.)

Uncertified Checks

PAR. 25. Collectors may accept uncertified checks in payment of income, war-profits, and excess-profits taxes, provided such checks are collectible at par, that is for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words "This check is in payment of an obligation to the United States and must be paid at par. No protest", with his name and title. The day on which the collector receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating—

(*a*) The name of the drawer of the check;

(*b*) The amount of the check;

(*c*) The amount of any cash, money order, or other instrument included in the same remittance;

(*d*) The name of each person whose tax is to be paid by the remittance;

(*e*) The amount of the payment on account of each person; and

(*f*) The kind of tax paid. (Article 1393, Regulations 69.)

Enforcement of Liability for Taxes Collected

PAR. 26. Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner, and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose. (Section 607, Revenue Act of 1934.)

Compromises

Civil and Criminal Cases

PAR. 27. The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise. (Section 3229, Revised Statutes.)

Concealment of Assets

PAR. 28. Any person who, in connection with any compromise under section 3229 of the Revised Statutes, as amended, or offer of such compromise, or in connection with any closing agreement under section 606 of this Act, or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both. (Section 616, Revenue Act of 1928.)

Courts—Jurisdiction

PAR. 29. (a) If any person is summoned under the internal-revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal-revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws. (Section 617, Revenue Act of 1928.)

Jurisdiction of District Courts

PAR. 30. Concurrent with the Court of Claims [the district courts shall have jurisdiction] of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been

erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds $10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced. (Section 1122, Revenue Act of 1926, amending section 24, in part, United States Judicial Code.)

Deposits of United States Bonds or Notes in Lieu of Surety

PAR. 31. Wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond", with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds or notes in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds or notes deposited hereunder and such other United States bonds or notes as may be substituted therefor from time to time as such security, may be deposited with the Treasurer of the United States, a Federal reserve bank, or other depositary duly designated for that purpose by the Secretary, which shall issue receipt therefor, describing such bonds or notes so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds or notes so deposited shall be returned to the depositor: *Provided*, That in case a person or persons supplying a contractor with labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat. 811), entitled "An Act to amend an Act approved August thirteenth, eighteen hundred and ninety-four, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works' ", shall file with the obligee, at any time after a default in the performance of any contract subject to said Acts, the application and affidavit therein provided, the obligee shall not deliver to the obligor the deposited bonds or notes nor any surplus proceeds thereof until the expiration of the time limited by said Acts for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or notes or proceeds subject to the order of the court having jurisdiction thereof: *Provided further*, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds or notes deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond: *Provided further*, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof: *And provided further*, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws. The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect. In order to avoid the frequent substitution of securities such rules and regulations may limit the effect of this section, in appropriate classes of cases, to bonds and notes of the United States maturing more than a year after the date of deposit of such bonds as security. The phrase "bonds or notes of the United States" shall be deemed, for the purposes of this section, to mean any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States. (Section 1126, Revenue Act of 1926, as amended by the Act entitled "An Act to amend the Second Liberty Bond Act, as amended, and for other purposes", approved, February 4, 1935.)

Disclosure of Income-Tax Returns Prohibited

PAR. 32. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income returns, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. (Section 3167, Revised Statutes, as reenacted by section 1115, Revenue Act of 1926.)

Examination of Books and Witnesses

PAR. 33. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons. (Section 1104, Revenue Act of 1926, as amended by section 618, Revenue Act of 1928.)

Transferees

PAR. 34. The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons. (Section 507, Revenue Act of 1934.)

Unnecessary Examinations

PAR. 35. No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary. (Section 1105, Revenue Act of 1926.)

Informers

PAR. 36. (a) Any person liable for tax on any income from illegally produced petroleum, who willfully fails to make return showing such income within the time prescribed by law

or 30 days after the enactment of this Act, whichever expires later, shall, in addition to all other penalties prescribed by law, be liable to a civil penalty of $500 plus $50 for each day during which such failure continues.

(b) Any person not an officer or employee of the United States who furnishes to the Commissioner or any collector original information leading to the recovery from any other person of any penalty under this section may be awarded and paid by the Commissioner a compensation of one-half the penalty so recovered, as determined by the Commissioner.

(c) As used in this section, the term "income from illegally produced petroleum" means any income (not shown on a return made within the time prescribed by law or 30 days after the enactment of this Act, whichever expires later) arising out of any sale or purchase of crude petroleum withdrawn from the ground subsequent to January 1, 1932, in violation of any State or Federal law (not including withdrawal in violation of any code of fair competition approved under the National Industrial Recovery Act or illegal withdrawal the penalties for which have been mitigated or satisfied in pursuance of law prior to the enactment of this Act), or arising out of any fee derived from acting as agent for any seller or purchaser in connection with a sale or purchase of such petroleum or products thereof, or any amount illegally received by any person charged with the enforcement of law with respect to such petroleum or products thereof. (Section 514, Revenue Act of 1934.)

Interest

Overpayments

PAR. 37. (a) Interest shall be allowed and paid upon any overpayment in respect of any internal-revenue tax, at the rate of 6 per centum per annum, as follows:

(1) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921 or any subsequent revenue Act, then to the date of the assessment of that amount.

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(b) As used in this section the term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924 or by any subsequent revenue Act.

(c) Section 1116 of the Revenue Act of 1926 is repealed.

(d) Subsections (a), (b), and (c) shall take effect on the expiration of thirty days after the enactment of this Act, and shall be applicable to any credit taken or refund paid after the expiration of such period, even though allowed prior thereto. (Section 614, Revenue Act of 1928, as amended by section 804, Revenue Act of 1936.)

Judgments

PAR. 38. (b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is hereby authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor. (Section 177 (b) of the Judicial Code, as amended by section 808, Revenue Act of 1936.)

Delinquent Taxes

PAR. 39. Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum. (Section 404, Revenue Act of 1935.)

Liens for Taxes

PAR. 40. (a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States.

(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (c) of this section.

(f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section. (Section 3186, Revised Statutes, as amended, and further amended by section 613, Revenue Act of 1928, and by section 509, Revenue Act of 1934.)

Priority of Debts Due United States

PAR. 41. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (Section 3466, Revised Statutes.)

PAR. 42. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate from whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (Section 3467, Revised Statutes, as amended by section 518, Revenue Act of 1934.)

Limitation

Effect of Expiration of Period of Limitation Against Taxpayer

PAR. 43. A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement. (Section 608, Revenue Act of 1928, as amended by section 503, Revenue Act of 1934.)

Effect of Expiration Period of Limitation Against United States

PAR. 44. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (Section 607, Revenue Act of 1928.)

Prosecutions for Internal Revenue Offenses

PAR. 45. (a) The Act entitled "An Act to limit the time within which prosecutions may be instituted against persons charged with violating internal revenue laws", approved July 5, 1884, as amended, and as reenacted by section 1110 of the Revenue Act of 1926, is amended to read as follows:

That no person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be six years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

(3) for the offense of willfully aiding or assisting in, or procuring, counselling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

For offenses arising under section 37 of the Criminal Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district.

(b) The amendment made by subsection (a) of this section shall apply to offenses whenever committed; except that it shall not apply to offenses the prosecution of which was barred before the date of the enactment of this Act. (Section 1108, Revenue Act of 1932.)

Penalties

PAR. 46. (c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Section 1114, in part, Revenue Act of 1926.)

Penalty for False Claim

PAR. 47. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material

fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; * * * or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both. * * * (Section 35, Criminal Code of the United States, as amended by the Act approved June 18, 1934, Public, No. 394.)

Failure to File Returns

PAR. 48. In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate. (Section 406, Revenue Act of 1935.)

Refund or Credit

Assignment of Claim Void Before Allowance

PAR. 49. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interests therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgment of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explain the transfer, assignment, or warrant of attorney to the person acknowledging the same. (Section 3477, Revised Statutes.)

Erroneous Credits

PAR. 50. (a) *Credit against barred deficiency.*—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607.

(b) *Credit of barred overpayment.*—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 608.

(c) *Application of section.*—The provisions of this section shall apply to any credit made before or after the enactment of this Act. (Section 609, Revenue Act of 1928.)

Effect of Expiration Period of Limitation Against United States

PAR. 51. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (Section 607, Revenue Act of 1928.)

Recovery of Amounts Erroneously Refunded

PAR. 52. (a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 608) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund or before May 1, 1928, whichever date is later.

(c) Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(d) Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund. (Section 610, Revenue Act of 1928, as amended, subsection (c) added by section 502, Revenue Act of 1934, subsection (d) added by section 803, Revenue Act of 1936.)

Suit May Not Be Brought Unless Claim Is Filed; Limitation

PAR. 53. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates. Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun. (Section 3226, Revised Statutes, as amended by section 1103, Revenue Act of 1932, and as amended by section 807, Revenue Act of 1936.)

Regulations

Retroactive Regulations

PAR. 54. (a) The Secretary, or the Commissioner with the approval of the Secretary may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal-revenue laws, shall be applied without retroactive effect. (Section 1108, Revenue Act of 1926, as amended by section 605, Revenue Act of 1928, and by section 506, Revenue Act of 1934.)

When Law is Changed

PAR 55. *Regulations when law is changed.*—The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue. (Section 3447, Revised Statutes; U. S. Code, Title 26, section 1601 (2).)

Reserve Requirements of Holding Company Affiliates of Banks

PAR. 56. (b) After five years after the enactment of the Banking Act of 1933, every such holding company affiliate (1) shall possess, and shall continue to possess during the life of such permit, free and clear of any lien, pledge, or hypothecation of any nature, readily marketable assets other than bank stock in an amount not less than 12 per centum of the aggregate par value of all bank stocks controlled by such holding company affiliate, which amount shall be increased by not less than 2 per centum per annum of such aggregate par value until such assets shall amount to 25 per centum of the aggregate par value of such bank stocks; and (2) shall reinvest in readily marketable assets other than bank stock all net earnings over and above 6 per centum per annum on the book value of its own shares outstanding until such assets shall amount to such 25 per centum of the aggregate par value of all bank stocks controlled by it;

(c) Notwithstanding the foregoing provisions of this section, after five years after the enactment of the Banking Act of 1933, (1) any such holding company affiliate the shareholders or members of which shall be individually and severally liable in proportion to the number of shares of such holding company affiliate held by them respectively, in addition to amounts invested therein, for all statutory liability imposed on such holding company affiliate by reason of its control of shares of stock of banks, shall be required only to establish and maintain out of net earnings over and above 6 per centum per annum on the book value of its own shares outstanding a reserve of readily marketable assets in an amount of not less than 12 per centum of the aggregate par value of bank stocks controlled by it, and (2) the assets required by this section to be possessed by such holding company affiliate may be used by it for replacement of capital in banks affiliated with it and for losses incurred in such banks, but any deficiency in such assets resulting from such use shall be made up within such period as the Federal Reserve Board may by regulation prescribe; and the provisions of this subsection, instead of subsection (b), shall apply to all holding company affiliates with respect to any shares of bank stock owned or controlled by them as to which there is no statutory liability imposed upon the holders of such bank stock. (Section 5144 (b) and (c) of the Revised Statutes as amended by section 19 of the Banking Act of 1933 and by section 311 of the Banking Act of 1935.)

Returns

Failure to Make; Procedure; Penalties

PAR. 57. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

If the failure to file a return (other than a return of income tax) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper.

The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax. (Section 3176, Revised Statutes, as amended by section 1103, Revenue Act of 1926, and by section 619, Revenue Act of 1928.)

Notice and Summons

PAR. 58. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of accunt containing entries relating to the business of such person or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein

authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That "person", as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions. (Section 3173, Revised Statutes, as reenacted by section 1115, Revenue Act of 1926.)

Public Records

PAR. 59. (a) Returns upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section and section 1203, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President. Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

(b) (1) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(2) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(3) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(c) The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe.

(d) All bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both.

(e) The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district. (Section 257, Revenue Act of 1926.)

Suits to Restrain Assessment or Collection

PAR. 60. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (Section 3224, Revised Statutes.)

Suits to Restrain Enforcement of Tax Liability

Declaratory Judgments

PAR. 61. (1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such. (Section 274D (1) of the Judicial Code as added by the Act of June 14, 1934, 48 Stat. 955, and amended by section 405, Revenue Act of 1935.)

NOTE.—The parenthetical phrase "(except with respect to Federal taxes)" in the foregoing paragraph, which was inserted by section 405 of the Revenue Act of 1935, applies to any proceeding which was pending in any court of the United States on August 30, 1935.

Transferee or Fiduciary

PAR. 62. No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes in respect of any such tax. (Section 604, Revenue Act of 1928.)

Tax on Transfers to Avoid Income Tax

PAR. 63. There shall be imposed upon the transfer of stock or securities by a citizen or resident of the United States, or by a domestic corporation or partnership, or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership, an excise tax equal to 25 per centum of the excess of (1) the value of the stock or securities so transferred over (2) its adjusted basis in the hands of the transferor as determined under section 113 of this Act. (Section 901, Revenue Act of 1932.)

PAR. 64. The tax imposed by section 901 shall not apply—

(a) if the transferee is an organization exempt from income tax under section 103 of this Act, or

(b) if prior to the transfer it has been established to the satisfaction of the Commissioner that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. (Section 902, Revenue Act of 1932.)

PAR. 65. A trust shall be considered a foreign trust within the meaning of this title if, assuming a subsequent sale by the trustee, outside the United States and for cash, of the property so transferred, the profit, if any, from such sale would not be included in the gross income of the trust under Title I of this Act. (Section 903, Revenue Act of 1932.)

PAR. 66. (a) The tax imposed by section 901 shall, without assessment or notice and demand, be due and payable by the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Under regulations prescribed by the Commissioner with the approval of the Secretary the tax may be abated, remitted, or refunded if after the transfer it has been established to the satisfaction of the Commissioner that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(c) All administrative, special, or stamp provisions of law, including penalties and including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title. (Section 904, Revenue Act of 1932.)

PAR. 67. Section 901 imposes an excise tax upon transfers of stock or securities made after the enactment of the Act (5 p. m., eastern standard time, June 6, 1932), by a citizen or resident of the United States, or by a domestic corporation or partnership, or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership. The tax is in an amount equal to 25 per cent of the excess of the fair market value of the stock or securities at the time of the transfer over the cost or other basis of the stock or securities provided in section 113 (a), adjusted as provided in section 113 (b).

The tax imposed by section 901 does not apply—

(a) if the transferee is an organization exempt from income tax under section 103; or

(b) if prior to the transfer it has been established to the satisfaction of the Commissioner that the transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

Whether a transfer of stock or securities is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes is a question to be determined from the facts and circumstances of each particular case. In any such case where a taxpayer desires to establish that the transfer is not in pursuance of such a plan, a statement under oath of the facts relating to the plan under which the transfer is to be made or was made, together with a copy of the plan if in writing, shall be forwarded to the Commissioner of Internal Revenue, Washington, D. C., for a ruling. A letter notifying the taxpayer of the Commissioner's determination will be mailed to the taxpayer.

Every person making a transfer described in section 901 shall make a return, under oath, to the collector of internal revenue on the day on which the transfer is made and, unless the transfer is nontaxable under section 902, pay the tax due on such transfer. The return shall be made on Form 926 and shall be filed with the collector for the district with whom a Federal income tax return would be filed. The return shall set forth in detail the following information:

(1) Name and address of transferor, and place of organization or creation, if a corporation, partnership, or trust.

(2) Name and address of transferee, place of organization or creation, and whether the transferee is a foreign corporation, a foreign trust, or a foreign partnership. If the transferee is a foreign trust or a foreign partnership the name and address of the fiduciary and each beneficiary, in the case of a trust, or of each partner, in the case of a partnership, must be shown.

(3) Description and amount of stock or securities transferred, the date of transfer, and a complete statement showing all the facts relating to the transfer, accompanied by a copy of the plan under which the transfer was made.

(4) The fair market value of the stock or securities transferred as of the date of transfer, and the cost or other basis thereof in the hands of the transferor determined and adjusted in accordance with section 113.

(5) Whether the transfer was made in pursuance of a plan submitted to and approved by the Commissioner of Internal Revenue as not having as one of its principal purposes the avoidance of Federal income taxes. If the plan has been so approved, a copy of the Commissioner's letter approving the plan should accompany the return.

(6) Such other information as may be required by the return form.

If the transferee of the stock or securities, the transfer of which is reported in the return, is a foreign organization meeting the tests of exemption from income tax provided in section 103, and the taxpayer on that account claims that no liability for tax is imposed by section 901, he must file an affidavit establishing the exemption of the transferee under section 103. This affidavit should accompany the return and should contain complete information showing the character of the transferee, the purpose for which it was organized, its actual activities, the source of its income and its disposition, whether or not any of its income is credited to surplus or may inure to the benefit of any private shareholder or individual, and in general all facts relating to its operations which affect its right to exemption. To such affidavit should be attached a copy of the charter or articles of incorporation, the by-laws of the organization, and the latest financial statement, showing the assets, liabilities, receipts, and disbursements of the organization.

A trust is to be considered a "foreign trust" within the meaning of Title VII if, assuming a subsequent sale by the trustee, outside the United States and for cash, of the property transferred to the trust, the profit, if any, from such sale (being income from sources without the United States) would not be included in the gross income of the trust under Title I. A domestic corporation or partnership is one organized or created in the United States, including only the States, the Territories of Alaska and Hawaii, and the District of Columbia, or under the law of the United States or of any State or Territory; and a foreign corporation or partnership is one which is not domestic.

The determination, assessment, and collection of the tax and the examination of returns and claims filed pursuant to Title VII and this article will be made under such procedure as may be prescribed from time to time by the Commissioner. (Article 1281, Regulations 77.)

Excess-Profits Tax Regulations

T. D. 4666—Excess-Profits Tax

Regulations relating to the excess-profits tax imposed by Section 106 of the Revenue Act of 1935 as amended by the Revenue Act of 1936—T. D. 4618 revoked

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. Section 402 (Title II—Capital Stock and Excess-profits Tax) of the Revenue Act of 1936 provides:

SEC. 402. *Excess-profits tax.*—

(a) Section 106 (b) of the Revenue Act of 1935 is amended by striking out "except that there shall be deducted the amount of income tax imposed for such year by section 13 of the Revenue Act of 1934, as amended", and inserting in lieu thereof "computed without the deduction of the tax imposed by this section, but with a credit against net income equal to the credit for dividends received provided in section 26 (b) of the Revenue Act of 1936."

(b) The amendment made by subsection (a) shall not apply to an income-tax taxable year beginning before January 1, 1936.

PAR. B. Section 106 (Title I) of the Revenue Act of 1935, as amended by section 402 of the Revenue Act of 1936, provides:

SEC. 106. *Excess-profits tax.*—

(a) There is hereby imposed upon the net income of every corporation for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 105, an excess-profits tax equal to the sum of the following:

6 per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

12 per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

(b) The adjusted declared value shall be determined as provided in section 105 as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). If the income-tax taxable year in respect of which the tax under this section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purposes of this section the net income shall be the same as the net income for income tax purposes for the year in respect of which the tax under this section is imposed, computed without the deduction of the tax imposed by this section, but with a credit against net income equal to the credit for dividends received provided in section 26 (b) of the Revenue Act of 1936.

(c) All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of the Revenue Act of 1934, as amended, shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

(d) The excess-profits tax imposed by section 702 of the Revenue Act of 1934 shall not apply to any taxpayer with respect to any income-tax taxable year ending after June 30, 1936.

PAR. C. Section 26 (b) (Title I—Income Tax) of the Revenue Act of 1936 provides:

SEC. 26. *Credits of corporations.*—In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

* * * * * * *

(b) *Dividends received.*—85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this title. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organ-

ized under the China Trade Act, 1922, or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

PAR. D. Section 401 (Title II) of the Revenue Act of 1936 provides:

SEC. 401. *Capital Stock Tax.*—
(a) Section 105 of the Revenue Act of 1935 is amended by striking out "$1.40" wherever appearing therein and inserting in lieu thereof "$1."
(b) Subsection (c) of such section is amended by striking out "1934" and inserting in lieu thereof "1936", and by striking out ", as amended" wherever appearing in such subsection.
(c) Subsection (f) (4) of such section is amended to read as follows: "(4) the excess of its income wholly exempt from the taxes imposed by the applicable income-tax law over the amount disallowed as a deduction by section 24 (a) (5) of the Revenue Act of 1934, or a corresponding provision of a later Revenue Act, and".

PAR. E. Section 105 (Title I) of the Revenue Act of 1935, as amended by section 401 of the Revenue Act of 1936, provides:

SEC. 105. *Capital stock tax.*—
(a) For each year ending June 30, beginning with the year ending June 30, 1936, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock.
(b) For each year ending June 30, beginning with the year ending June 30, 1936, there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to $1 for each $1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.
(c) The taxes imposed by this section shall not apply—

(1) to any corporation enumerated in section 101 of the Revenue Act of 1936;
(2) to any insurance company subject to the tax imposed by section 201, 204, or 207 of such Act.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.
(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.
(f) For the first year ending June 30, in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid in surplus and contributions to capital, (3) its net income, (4) the excess of its income wholly exempt from the taxes imposed by the applicable income-tax law over the amount disallowed as a deduction by section 24 (a) (5) of the Revenue Act of 1934, or a corresponding provision of a later Revenue Act, and (5) the amount of the dividend deduction allowable for income tax purposes, and minus (A) the value of property distributed in liquidation to shareholders, (B) distributions of earnings or profits, and (C) the excess of the deductions allowable for income tax purposes over its gross income; adjustment being made for each income-tax taxable year included in the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. The amount of such adjustment for each such year shall be computed (on the basis of a separate return) according to the income tax law applicable to such year. For any subsequent year ending June 30, the adjusted declared value in the case of a foreign corporation shall be the original declared value adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.
(g) For the purpose of the tax imposed by this section there shall be allowed in the case of a corporation organized under the China Trade Act, 1922, as a credit against the adjusted declared value of its capital stock, an amount equal to the proportion of such adjusted declared value which the par value of the shares of stock of the corporation, owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date. For the purposes of this subsection shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested; and as used in this subsection the term "China" shall have the same meaning as when used in the China Trade Act, 1922.
(h) The capital stock tax imposed by section 701 of the Revenue Act of 1934 shall not apply to any taxpayer with respect to any year after the year ending June 30, 1935.

PAR. F. Section 52 (Title I—Income Tax) of the Revenue Act of 1934 provides:

SEC. 52. *Corporation returns.*—
Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

PAR. G. Section 53 (Title I—Income Tax) of the Revenue Act of 1934 provides, in part, as follows:

SEC. 53. *Time and place for filing returns.*—
(a) *Time for filing.*—

(1) *General rule.*—Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.
(2) *Extension of time.*—The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(b) *To whom return made.*—

* * * * * * *

(2) *Corporations.*—Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland.

PAR. H. Section 56 (Title I—Income Tax) of the Revenue Act of 1934 provides, in part, as follows:

SEC. 56. *Payment of tax.*—
(a) *Time of payment.*—The total amount of tax imposed by this title shall be paid on the fifteenth day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the third month following the close of the fiscal year.

* * * * * * *

(c) *Extension of time for payment.*—At the request of the taxpayer, the Commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

* * * * * * *

PAR. I. Section 145 (Title I—Income Tax) of the Revenue Act of 1934 provides:

SEC. 145. *Penalties.*—
(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to

make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax; and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

PAR. J. Section 61. (Title I—Income Tax) of the Revenue Act of 1934 provides:

SEC. 61. *Laws made applicable.*—
All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title.

PAR. K. Section 62 (Title I—Income Tax) of the Revenue Act of 1934 provides:

SEC. 62. *Rules and regulations.*—
The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

Pursuant to the above-quoted provisions and other provisions of the internal revenue laws, the following regulations are hereby prescribed with respect to the excess-profits tax imposed by the Revenue Act of 1935, as amended:

ARTICLE 1. *Definitions.*—As used in these regulations, the term—

(a) *"Adjusted declared value"* means in the case of a domestic corporation the adjusted declared value of its capital stock as determined under section 105 of the Revenue Act of 1935, as amended, and the regulations issued respecting the capital stock tax imposed by that section; and in the case of a foreign corporation the adjusted declared value of capital employed in the transaction of its business in the United States as determined under such section and the regulations issued in reference thereto.

(b) *"Tax"*, except as otherwise indicated, means the excess-profits tax imposed by section 106 of the Revenue Act of 1935, as amended.

(c) *"Income-tax taxable year"* means the calendar year, the fiscal year ending during such calendar year, or the fractional part of a year, upon the basis of which the corporation's net income is computed and for which its income tax returns are made for Federal income tax purposes.

(d) *"Net Income"* means (1) "Net income" within the contemplation of section 21 of the Revenue Act of 1934, or (2) in the case of an income-tax taxable year governed by the Revenue Act of 1936, "net income" within the contemplation of section 21 of the Revenue Act of 1936. In the case of income-tax taxable years governed by the Revenue Act of 1934, the credits allowed corporations against net income for income tax purposes (for example, the credit allowed by section 26 of the Revenue Act of 1934) are not applicable in respect of the excess-profits tax, but the amount of income tax imposed for the same taxable year shall be deducted from net income in computing the excess-profits tax. In the case of income-tax taxable years, governed by the Revenue Act of 1936, neither the amount of income tax imposed by the Revenue Act of 1936 nor the amount of the excess-profits tax imposed by the Revenue Act of 1935, as amended, shall be deducted from net income in computing the excess-profits tax and none of the credits allowed corporations against net income for income tax purposes are applicable in respect of the excess-profits tax except the credit against net income equal to the credit for dividends received provided in section 26 (b) of the Revenue Act of 1936. (See paragraph C.)

ART. 2. *Scope of tax.*—The excess-profits tax, imposed by section 106 of the Revenue Act of 1935, as amended, is imposed upon a certain portion of the net income of every corporation for each income-tax taxable year ending after the close of the first year in respect of which the corporation is subject to the capital stock tax imposed by section 105 of that Act.

ART. 3. *Measure and rate of tax.*—

(a) *Domestic and foreign corporations.*—The tax is imposed in an amount equal to the sum of (1) 6 percent of such portion of the corporation's net income for the income-tax taxable year as is in excess of 10 percent and not in excess of 15 percent of the adjusted declared value plus (2) 12 percent of such portion of its net income for the income-tax taxable year as is in excess of 15 percent of the adjusted declared value, as of the close of the last preceding income-tax taxable year (or as of the date of organization if the corporation had no preceding income-tax taxable year).

(b) *Adjusted declared value.*—No variation is permitted between the adjusted declared value set forth in the corporation's capital stock tax return and the adjusted declared value set forth in its excess-profits tax return, except that in the case of an excess-profits tax return for an income-tax taxable year which is a period of less than twelve months the adjusted declared value set forth in its capital stock tax return shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to twelve months.

ART. 4. *Method of computation, examples.*—The application of the provisions of article 3 of these regulations may be illustrated generally by the following examples:

Example (1).—The M Corporation the income-tax taxable year of which is the calendar year, is subject to the capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, for the year ending June 30, 1936. The value declared in its capital stock tax return for the year ending June 30, 1936, of its capital stock as of the close of its preceding income-tax taxable year (the calendar year 1935) is $100,000. The net income of the corporation for the calendar year 1936, determined under the Revenue Act of 1936, is $25,000. (The net income for income-tax taxable years beginning after December 31, 1935, shall be determined under the Revenue Act of 1936.) During its taxable year the corporation received dividends from corporations subject to taxation under Title I of the Revenue Act of 1936, amounting to $5,000. (See paragraph C.) The excess-profits tax for the calendar year 1936 is $990, computed as follows:

Net income for calendar year 1936	$25,000.00
Less credit for dividends received (85 percent of $5,000)	4,250.00
Balance of net income	20,750.00
Less:	
10 percent of the value declared in the capital stock tax return for the year ending June 30, 1936, of the capital stock as of December 31, 1935 (10 percent of $100,000)	10,000.00
Net income subject to excess-profits tax	10,750.00
Less:	
Amount taxable at 6 percent, portion of net income in excess of 10 percent and not in excess of 15 percent of the adjusted declared value of the capital stock as of December 31, 1935 ($15,000 minus $10,000)	5,000.00
Amount taxable at 12 percent	5,750.00
Excess-profits tax at 6 percent (6 percent of $5,000)	300.00
Excess-profits tax at 12 percent (12 percent of $5,750)	690.00
Total excess-profits tax ($300 plus $690)	990.00

Example (2).—The O Corporation, the income-tax taxable year of which is the fiscal year ending July 31, is subject to the capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, for the year ending June 30, 1936. The value declared in its capital stock tax return for the year ending June 30, 1936, of its capital stock as of the close of its

preceding income-tax taxable year (the fiscal year ended July 31, 1935) is $108,000. The net income of the corporation for the fiscal year ending July 31, 1936, determined under Title I of the Revenue Act of 1934, is $25,000. (The net income for income-tax taxable years beginning after July 31, 1935, and before January 1, 1936, shall be determined under Title I of the Revenue Act of 1934.) The excess-profits tax for the fiscal year ending July 31, 1936, is $967.50, computed as follows:

Net income for fiscal year ending July 31, 1936		$25,000.00
Less:		
Income tax for fiscal year ending July 31, 1936	3,437.50	
Balance of net income		21,562.50
Less:		
10 percent of the value declared in the capital stock tax return for the year ending June 30, 1936, of the capital stock as of July 31, 1935 (10 percent of $108,000)	10,800.00	
Net income subject to excess-profits tax		10,762.50
Less:		
Amount taxable at 6 percent, portion of net income in excess of 10 percent and not in excess of 15 percent of the adjusted declared value of the capital stock as of July 31, 1935 ($16,200 minus $10,800)	5,400.00	
Amount taxable at 12 percent		5,362.50
Excess-profits tax at 6 percent (6 percent of $5,400)		324.00
Excess-profits tax at 12 percent (12 percent of $5,362.50)		643.50
Total excess-profits tax ($324 plus $643.50)		967.50

ART. 5. *Return.*—Every corporation which is subject to the capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, shall make an excess-profits tax return for each income-tax taxable year which ends after the close of the first year in respect of which it is subject to such capital stock tax. There is no provision in the Revenue Act of 1935 which authorizes the making of a consolidated return by an affiliated group of corporations for the purpose of the excess-profits tax imposed by section 106 of that Act. Accordingly, every corporation which is liable for the making of an excess-profits tax return under section 106 of the Revenue Act of 1935, as amended (for any income-tax taxable year ending June 30, 1936), whether or not such corporation is a member of an affiliated group of corporations, must make its excess-profits tax return and compute its net income separately, without regard to the provisions of section 141 of the Revenue Act of 1934.

The excess-profits tax return shall be made within the time prescribed for making the corporation's Federal income tax return for the income-tax taxable year, and shall be made to the collector of internal revenue to whom such income tax return is required to be made.

ART. 6. *Payment of tax.*—The excess-profits tax for any income-tax taxable year shall be paid within the time prescribed for paying the Federal income tax for such taxable year. (See paragraph I, above.)

ART. 7. *Credits against tax prohibited.*—Foreign income and profits taxes may not be credited against the excess-profits tax imposed by section 106 of the Revenue Act of 1935, as amended.

ART. 8. *Determination of tax, assessment, collection.*—The determination, assessment, and collection of the tax, and the examination of returns and claims in connection therewith, will be made under such procedure as may be prescribed from time to time by the Commissioner.

ART. 9. *Revocation of Treasury Decision 4618.*—Treasury Decision 4618 (C. B. XIV–2, 47), approved December 20, 1935, is hereby revoked.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, July 16, 1936.

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

[Filed with the Division of the Federal Register, July 13, 1936; 12:58 p. m.]

T. D. 4690—Excess-Profits Tax

Amendment of Treasury Decision 4666, relating to the excess-profits tax imposed by section 106 of the Revenue Act of 1935, as amended

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

Article 3 (b) (*Adjusted declared value*) of Treasury Decision 4666 (Int. Rev. Bull. XV–29, 2), relating to the excess-profits tax imposed by section 106 of the Revenue Act of 1935, as amended, is amended by adding thereto the following sentence:

The first return of a corporation covering the part of the year in which it was incorporated, or the final return of a corporation covering the part of the year in which it was dissolved, is a return for 12 months and not for a period of less than twelve months.

The last sentence of article 5 (*Return*), of Treasury Decision 4666 is amended to read:

Accordingly, every corporation which is liable for the making of an excess-profits tax return under section 106 of the Revenue Act of 1935, as amended (for any income-tax taxable year ending after June 30, 1936), whether or not such corporation is a member of an affiliated group of corporations, must make its excess-profits tax return and compute its net income separately, without regard to the provisions of section 141 of the Revenue Act of 1934 or section 141 of the Revenue Act of 1936.

This Treasury Decision is issued under the authority prescribed by section 62 of the Revenue Act of 1934.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, August 26, 1936.

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

[Filed with the Division of the Federal Register, August 28, 1936; 12:34 p. m.]

[F. R. Doc. 3378—Filed, November 13, 1936; 1:05 p. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

IR–B–1, Supplement B Issued November 16, 1936

1936 AGRICULTURAL CONSERVATION PROGRAM

INSULAR REGION

Pursuant to authority vested in the Secretary of Agriculture under Section 8 of the Soil Conservation and Domestic Allotment Act, Insular Region Bulletin No. 1, as amended by Supplement A, is hereby further amended as follows:

SECTION 1. The term "operator" in "Part 1. Definitions", is amended to read as follows:

Operator means a person (whether his relation to the farm be that of owner, cash tenant, share-tenant, or share-cropper) who owns a portion or all of the crops growing on a farm on December 31, 1936, with respect to which an application for grant is made, provided that, if no crop is growing on such farm on December 31, 1936, a person who owned a portion or all of the crop last grown on such farm will be regarded as an operator thereof.

SECTION 2. The term "farm" in "Part 1. Definitions" is amended to read as follows:

Farm means all tracts of cropland and any other land in either the territory of Alaska, territory of Hawaii or Puerto Rico operated by the same operator(s) in 1936 as a single farming unit with cropping practices, work stock, farm machinery, and labor substantially separate from that for any other such unit.

SECTION 3. Section 2 of Part IV is amended to read as follows:

2. TERRACING

(a) A payment of 40 cents per one hundred linear feet of completed continuous terrace constructed and maintained; the total payment for terracing not to exceed $2.50 per acre of land so terraced. (See Farmers' Bulletin No. 1669, *Farm Terracing*, published by the U. S. Department of Agriculture.)

(b) A payment of $1.50 per acre for completed individual terraces around coffee trees: *Provided*, That not less than five hundred of such terraces are completed and maintained per acre of land so terraced.

In testimony whereof, R. G. Tugwell, Acting Secretary of Agriculture, has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 16th day of November 1936.

[SEAL] R. G. TUGWELL, *Acting Secretary.*

[F. R. Doc. 3397—Filed, November 16, 1936; 11:44 a. m.]

ORDER TERMINATING OPERATION OF LICENSE FOR MILK—KANSAS CITY, MISSOURI, SALES AREA

Whereas, H. A. Wallace, Secretary of Agriculture of the United States of America, acting under the provisions of the Agricultural Adjustment Act, as amended, and for the purposes and within the limitations therein contained, and pursuant to the applicable general regulations issued thereunder, on the 16th day of March 1934 issued, under his hand and the official seal of the Department of Agriculture, a License for Milk—Kansas City, Missouri, Sales Area, effective on the 17th day of March 1934, and amended said license on April 1, May 16, and July 17, 1934, and July 1 and August 1, 1935; and

Whereas, the Secretary of Agriculture has determined to terminate said license, as amended;

Now, therefore, the undersigned, acting under the authority vested in the Secretary of Agriculture under the terms and conditions of the said act, as amended, and pursuant to the applicable general regulations issued thereunder, hereby terminates the said license, *subject, however*, to the following conditions:

1. That the provisions of article III of the said license, as amended, relating to the designation, rights, and duties of the Market Administrator, shall remain in force and effect for the purpose of enabling the Market Administrator, or his successor, to liquidate and settle all matters arising under the terms and provisions of the said license, as amended;

2. That any and all of the obligations which have arisen thereunder, or which may hereafter arise in connection therewith, by virtue of, or pursuant to, the said license, as amended, shall not be affected, waived, or suspended hereby; and

3. That the Market Administrator, or his successor in office designated in accordance with the provisions of the license, shall have the power and authority:

(a) To collect any and all of the moneys due to the Market Administrator under the terms and provisions of the said license, as amended;

(b) To distribute any moneys heretofore or hereafter collected in accordance with the provisions of the said license, as amended; and

(c) To have and exercise all of the powers and authority vested in the Market Administrator under the terms and provisions of the said license, as amended, as may be necessary or proper to carry out the foregoing purposes.

In witness whereof, R. G. Tugwell, Acting Secretary of Agriculture of the United States of America, has executed this Order of Termination in duplicate, and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 16th day of November 1936 and hereby declares that this termination shall be effective on and after 12:01 a. m., c. s. t., December 1, 1936.

[SEAL] R. G. TUGWELL,
Acting Secretary of Agriculture.

[F. R. Doc. 3396—Filed, November 16, 1936; 11:44 a. m.]

Bureau of Agricultural Economics.

ORDER OF DESIGNATION OF TOBACCO MARKETS

Kentucky

Whereas, the Act of Congress aproved August 23, 1935 (49 Stat. 731), entitled "The Tobacco Inspection Act" contains the following provisions:

SEC. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determination occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein.

SEC. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: *Provided*, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

and

Whereas, pursuant to said Act, a referendum has been held among growers of Burley tobacco in Kentucky, commonly referred to as Type 31 tobacco, who sell tobacco on the markets named below, in which referendum said growers were given an opportunity to vote for or against the designation, as provided in Section 5 of said Act in the following auction markets, to wit: Bowling Green, Cynthiana, Horse Cave, and Mt. Sterling, in the State of Kentucky; and

Whereas more than two-thirds of the growers of tobacco voting in said referendum voted in favor of said designation,

Now, therefore, by virtue of the authority conferred upon me by Section 5 of The Tobacco Inspection Act and the affirmative results of the referendum conducted thereunder, the cities of Bowling Green, Cynthiana, Horse Cave, and Mt. Sterling, Kentucky, are designated as markets where the tobacco bought and sold thereon at auction, or the products customarily made therefrom, moves in commerce.

It is hereby ordered, that, effective 30 days from this date no tobacco shall be offered for sale at auction on the above-named markets until it shall have been inspected and certified by an authorized representative of the United States Department of Agriculture according to standards estab-

lished under the Act; provided, however, that the requirement of inspection and certification may be suspended at such times as it is found impracticable to provide inspectors or when the quantity of tobacco available for inspection is insufficient to justify the cost of such service. No fee or charge shall be imposed or collected for the inspection and certification of tobacco sold or offered for sale at auction on the markets designated herein.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, this 14th day of November 1936.

[SEAL] R. G. TUGWELL,
Acting Secretary of Agriculture.

[F. R. Doc. 3395—Filed, November 16, 1936; 11:10 a. m.]

Bureau of Animal Industry.

BAI Order 360

RULE 1, REVISION 35—TO PREVENT THE SPREAD OF SPLENETIC OR TICK FEVER IN CATTLE

[Effective on and after Dec. 1, 1936]

The fact has been determined by the Secretary of Agriculture and notice is hereby given that the contagious and infectious disease known as splenetic or tick fever exists in cattle in the following-named States and Territory, to wit: Florida, Texas, and Puerto Rico.

Now, therefore, I, R. G. Tugwell, Acting Secretary of Agriculture, under authority conferred by section 1 of the act of Congress approved March 3, 1905 (33 Stat. 1264), do hereby quarantine the areas hereinafter described, and do order by this rule 1, revision 35, under the authority and discretion conferred on the Secretary of Agriculture by section 3 of the said act of Congress, approved March 3, 1905 (33 Stat. 1265), that the interstate movement of cattle from the areas herein quarantined shall be made only in accordance with the regulation of the Secretary of Agriculture for the prevention of the spread of splenetic or tick fever in cattle.

AREAS QUARANTINED

The following areas are quarantined for splenetic or tick fever in cattle:

Florida

The following counties and portions of counties are quarantined: Charlotte, Hendry, Orange, and Osceola; and that portion of Collier County lying north and east of a line beginning at that point where the Everglades branch of the Atlantic Coast Line Railroad crosses the Collier-Hendry County line, thence running southeasterly along said railroad to where it crosses the boundary line dividing township 49 south and township 50 south, thence running east along said township line to the Broward-Collier County line; that portion of Polk County lying north and east of a line beginning where the Seaboard Air Line Railroad crosses the Lake-Polk County line, thence running southeasterly along said railroad to Polk City, thence running southeasterly along the Polk City-Haines City highway to the northwest corner of the city limits of Haines City, thence running due east to the range line dividing range 27 east and range 28 east, thence running south along said range line to its intersection with the township line dividing township 29 south and township 30 south, thence running east along said township line to where it crosses the range line dividing range 28 east and range 29 east, thence running south along said range line to the Highlands-Polk County line.

Puerto Rico

The entire Territory is quarantined.

Texas

The following counties and portions of counties are quarantined: Angelina, Chambers, Duval, Hardin, Harris, Houston, Jasper, Jefferson, Jim Hogg, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Starr, Trinity, Tyler, Webb, and Zapata; that part of Brazoria County lying east of the Brazos River; that part of Galveston County, which joins Chambers County, known as Galveston Peninsula; all of Cameron County except that portion lying north of a boundary line beginning at a point where the Missouri Pacific Railroad intersects the Willacy County Line, thence running southerly along the said Missouri Pacific Railroad to Combes, thence running easterly along the county highway to the Arroyo Colorado, and thence running in a northerly course along the west bank of the Arroyo Colorado to the Willacy County line; and all that part of Hidalgo County except that portion lying north and east of a boundary line beginning at a point where the Missouri Pacific Railroad intersects the Willacy-Hidalgo County line, thence running westerly along the Missouri Pacific Railroad to Monte Christo, thence running along the Monte Christo-La Reforma county highway in a northwesterly direction to the point where said county highway intersects the Hidalgo-Starr County line; thence running northerly along the said county line to Brooks County.

INTERPRETATION

This rule 1, revision 35, shall be construed in connection with the regulation of the Secretary of Agriculture for the prevention of the spread of splenetic or tick fever in cattle and is subject to amendment or revision on statutory notice.

Rule 1, revision 34 (B. A. I. Order 358), dated November 9, 1935, effective December 1, 1935, shall cease to be effective on and after December 1, 1936, on and after which date this rule 1, revision 35, which for purposes of identification is designated as B. A. I. Order 360, shall become and be effective until otherwise ordered.

The effect of this order is as follows:

In Florida: De Soto and Seminole Counties are released from quarantine.

In Louisiana: Allen, Avoyelles, Beauregard, Caldwell, Catahoula, De Soto, Evangeline, Franklin, Grant, Jackson, La Salle, Morehouse, Natchitoches, Ouachita, Rapides, Richland, Red River, Sabine, Union, Vernon, West Carroll, and Winn Parishes, and the remainder of Calcasieu and St. Landry Parishes, are released from quarantine.

In Texas: Brooks, Jim Wells, Kenedy, Leon, McMullen, Madison, Walker, and Willacy Counties, and parts of Cameron and Hidalgo Counties, are released from quarantine.

The existing quarantine in the Territory of Puerto Rico is continued.

Done in the City of Washington this 16th day of November 1936.

Witness my hand and the seal of the Department of Agriculture.

[SEAL] R. G. TUGWELL,
Acting Secretary of Agriculture.

[F. R. Doc. 3389—Filed, November 16, 1936; 11:08 a. m.]

Note:

FEEDING STATIONS FOR NONINFECTED CATTLE

Properly equipped noninfectious pens are maintained at the following points within the quarantined area:

Texas

Beaumont, Jefferson County: Gulf, Colorado & Santa Fe Railway Co. pens and Southern Pacific Co. pens.
Conroe, Montgomery County: Gulf, Colorado & Santa Fe Railway Co. pens.
(Englewood) Houston, Harris County: Southern Pacific Railway Co. pens.
Houston, Harris County: Port City Stockyards pens.
Laredo, Webb County: International & Great Northern Railroad Co. pens.
Orange, Orange County: Southern Pacific Lines pens.

Bureau of Entomology and Plant Quarantine.

ALL FRUITS FROM MEXICO BROUGHT UNDER QUARANTINE 56 BY REVOCATION OF QUARANTINE 5

INTRODUCTORY NOTE

Quarantine No. 56, the Fruit and Vegetable Quarantine, which was promulgated about ten years after Quarantine No. 5 (Foreign), the Mexican Fruit Fly Quarantine, regulated the entry into the United States of all Mexican fruits except those prohibited by Quarantine No. 5. Since the said Fruit and Vegetable Quarantine contains prohibitive as well as restrictive features, Quarantine No. 5 is unnecessary.

The following revocation of Quarantine No. 5 automatically places the fruits that were named in that quarantine under the provisions of Quarantine No. 56; however, under the latter quarantine these fruits will continue to be prohibited entry except when so treated as to eliminate pest risk.

LEE A. STRONG,
Chief, Bureau of Entomology and Plant Quarantine.

NOTICE OF LIFTING OF QUARANTINE NO. 5 (FOREIGN) MEXICAN FRUIT FLY QUARANTINE

Under the authority of the Plant Quarantine Act of August 20, 1912 (37 Stat. 315), as amended, I, R. G. Tugwell, Acting Secretary of Agriculture, do hereby revoke Notice of Quarantine No. 5 (Foreign), Mexican Fruit Fly, promulgated January 15, 1913, and its amendment No. 1, of February 8, 1913; such revocation to become effective December 1, 1936.

Done at the city of Washington this 14th day of November 1936.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] R. G. TUGWELL,
Acting Secretary of Agriculture.

[F. R. Doc. 3392—Filed, November 16, 1936; 11:09 a. m.]

FRUIT AND VEGETABLE QUARANTINE—NOTICE OF QUARANTINE NO. 56, WITH REVISED REGULATIONS

INTRODUCTORY NOTE

The printed supply of Notice of Quarantine No. 56, with supplemental regulations as revised effective November 1, 1932, and of amendment No. 6, effective August 1, 1933, is exhausted and this edition is essentially a mere reprint except for the revision of regulation 2. The concurrent lifting of the Mexican Fruit Fly Quarantine No. 5 (Foreign) automatically places the Mexican fruits, formerly prohibited entry by that quarantine, under the provisions of Quarantine No. 56, which now prohibits or restricts the entry of all fruits from Mexico. Since the entry of these fruits from Mexico will continue to be prohibited, except when they have been so treated as to remove pest risk, it is deemed desirable at this time to clarify the provisions of regulation 2 with respect to the entry of certain products which have been so treated as to eliminate pest risk, or which may be admitted subject to adequate safeguards prescribed as conditions of entry. Advantage has been taken of this opportunity to remove certain specific limitations as to ports of entry authorized for various commodities, leaving those limitations to be specified in the permits.

The only change made in the other regulations is the substitution of the now legal title "Bureau of Entomology and Plant Quarantine" in regulations 1 and 3 for the former title "Bureau of Plant Quarantine."

The notice of permit requirements for the entry of chestnuts and acorns from foreign countries, issued pursuant to the provisions of regulation 2, which became effective July 29, 1929, continues in effect.

LEE A. STRONG,
Chief, Bureau of Entomology and Plant Quarantine.

NOTICE OF QUARANTINE NO. 56

[Effective on and after Nov. 1, 1923]

The fact has been determined by the Secretary of Agriculture, and notice is hereby given (1) that there exists in Europe, Asia, Africa, Mexico, Central America, and South America, and other foreign countries and localities, certain injurious insects, including fruit and melon flies (Trypetidae), new to and not heretofore widely distributed within and throughout the United States, which affect and may be carried by fruits and vegetables commercially imported into the United States or brought to the ports of the United States as ships' stores or casually by passengers or others, and (2) that the unrestricted importation of fruits and vegetables from the countries and localities enumerated may result in the entry into the United States of injurious insects, including fruit and melon flies (Trypetidae).

Now, therefore, I, Henry C. Wallace, Secretary of Agriculture, under authority conferred by the act of Congress approved August 20, 1912 (37 Stat. 315), do hereby declare that it is necessary, in order to prevent the introduction into the United States of certain injurious insects, including fruit and melon flies (Trypetidae), to forbid, except as provided in the rules and regulations supplemental hereto, the importation into the United States of fruits and vegetables from the foreign countries and localities named and from any other foreign country or locality, and of plants or portions of plants used as packing material in connection with shipments of such fruits and vegetables.

On and after November 1, 1923, and until further notice, the importation from all foreign countries and localities into the United States of fruits and vegetables, and of plants or portions of plants used as packing material in connection with shipments of such fruits and vegetables, except as provided in the rules and regulations supplemental hereto, is prohibited.

This quarantine leaves in full effect all special quarantines and other orders now in force restricting the entry into the United States of fruits and vegetables with the exception of Quarantine No. 49, with regulations, on account of the citrus black fly, which is replaced by this quarantine. A list of such quarantines and restrictive orders is given in Appendix A of the rules and regulations supplemental hereto.

Done this first day of August 1923.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] HENRY C. WALLACE,
Secretary of Agriculture.

REVISED RULES AND REGULATIONS SUPPLEMENTAL TO NOTICE OF QUARANTINE NO. 56, GOVERNING THE IMPORTATION OF FRUITS AND VEGETABLES INTO THE UNITED STATES

[Approved Nov. 14, 1933; Effective Dec. 1, 1936]

REGULATION 1—DEFINITIONS

(a) *Fresh fruits and vegetables.*—The edible, more or less succulent, portions of food plants in the raw or unprocessed state, such as bananas, oranges, grapefruit, pineapples, tomatoes, peppers, lettuce, etc.

(b) *Plants or portions of plants.*—Leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from clean fruits and vegetables, or other commercial articles.

(c) *Port of first arrival.*—The first port within the United States where the shipment is (1) offered for consumption entry or (2) offered for entry for immediate transportation in bond.

(*d*) *Inspector.*—An inspector of the Bureau of Entomology and Plant Quarantine, United States Department of Agriculture.

REGULATION 2—RESTRICTIONS ON ENTRY OF FRUITS AND VEGETABLES

All importations of fruits and vegetables must be free from plants or portions of plants, as defined in regulation 1 (*b*).

Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs, and dates, raisins, nuts, and dry beans and peas, may be imported without permit or other compliance with these regulations: *Provided*, That any such articles may be made subject to entry only under permit and on compliance with the safeguards to be prescribed therein, when it shall be determined by the Secretary of Agriculture that the condition of drying, curing, or processing to which they have been subjected may not entirely eliminate risk. Such determination with respect to any such articles shall become effective after due notice.

Except as restricted, as to certain countries and districts[1] by special quarantines and other orders now in force and by such restrictive orders as may hereafter be promulgated, the following fruits may be imported from all countries under permit and on compliance with these regulations: Bananas, pineapples, lemons, and sour limes. Grapes of the European or vinifera type and any vegetable, except as restricted by special quarantine as indicated above, may be imported from any country under permit and on compliance with these regulations, at such ports as shall be authorized in the permits, on presentation of evidence satisfactory to the United States Department of Agriculture that such grapes and vegetables are not attacked in the country of origin by injurious insects, including fruit and melon flies (Trypetidae), or that their importation from definite areas or districts under approved safeguards prescribed in the permits can be authorized without risk.

The following additions and exceptions are authorized for the countries concerned to the fruits and vegetables listed in the preceding paragraph: *Provided*, That as to such additions and exceptions, the issuance of permits may be conditioned on presentation of evidence satisfactory to the United States Department of Agriculture that such fruits and vegetables are not attacked in the country of origin by injurious insects, including fruit flies and melon flies; or that their importation from definite areas or districts under approved safeguards prescribed in the permits can be authorized without risk:

Frozen or treated fruits and vegetables from all countries.—Upon compliance with these regulations and with such conditions as may be prescribed by the Chief of the Bureau of Entomology and Plant Quarantine, fruits and vegetables which have been treated, or are to be treated, under the supervision of a plant quarantine inspector of the Department, will be permitted entry under permit at such ports as may be specified in the permit, when, in the judgment of the Chief of the Bureau of Entomology and Plant Quarantine, such importation may be permitted without pest risk.

Commonwealth of Australia—States of Victoria, South Australia, and Tasmania.—Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from the States of Victoria, South Australia, and Tasmania under such conditions and at such ports as may be designated in the permits.

New Zealand.—Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from New Zealand under such conditions and at such ports as may be designated in the permits.

Japan.—Upon compliance with the regulations under Quarantine No. 28, oranges of the mandarin class, including satsuma and tangerine varieties, may be imported from Japan at the port of Seattle and such other northern ports as may be designated in the permits.

Mexico.—Potatoes may be imported from Mexico upon compliance with the regulations issued under the order of December 22, 1913.

Argentina.—Upon compliance with these regulations, fruits, other than those listed in the second and third paragraphs of this regulation, may be imported from Argentina under such conditions and at such ports as may be designated in the permits.

Chile.—Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation, may be imported from Chile under such conditions and at such ports as may be designated in the permits.

West Indies.—Upon compliance with these regulations all citrus fruits from the West Indies may be permitted entry at such ports as may be designated in the permits.

Jamaica.—Entry of pineapples from Jamaica is restricted to the port of New York or such other northern ports as may be designated in the permits.

Canada.—Fruits and vegetables grown in the Dominion of Canada may be imported into the United States from Canada free from any restrictions whatsoever under these regulations.

General.—In addition to the fruits, the entry of which is provided for in the preceding paragraphs of this regulation, such specialties as hothouse-grown fruits or other special fruits, which can be accepted by the United States Department of Agriculture as free from risk of carrying injurious insects, including fruit flies (Trypetidae), may be imported under such conditions and at such ports as may be designated in the permits.

REGULATION 3—APPLICATIONS FOR PERMITS FOR IMPORTATION OF FRUITS AND VEGETABLES

Persons contemplating the importation of fruits or vegetables, the entry of which is authorized in these regulations, shall first make application to the Bureau of Entomology and Plant Quarantine for a permit, stating in the application the country or locality of origin of the fruits or vegetables, the port of first arrival, and the name and address of the importer in the United States to whom the permit should be sent.

Applications for permits should be made in advance of the proposed shipments; but if, through no fault of the importer, a shipment should arrive before a permit is received, the importation will be held in customs custody at the port of first arrival, at the risk and expense of the importer, for a period not exceeding 20 days pending the receipt of the permit.

Application may be made by telegraph, in which case the information required above must be given.

A separate permit must be secured for shipments from each country and for each port of first arrival in the United States.

REGULATION 4—ISSUANCE OF PERMITS

On approval by the Secretary of Agriculture of an application for the importation of fruits or vegetables, a permit will be issued in quadruplicate; one copy will be furnished to the applicant for presentation to the customs officer at the port of first arrival, one copy will be mailed to the collector of customs and one to the inspector of the Department of Agriculture at the port of first arrival, and the fourth will be filed with the application. Unless otherwise stated in the permit, all permits will be valid from date of issuance until revoked.

REGULATION 5—NOTICE OF ARRIVAL BY PERMITTEE

Immediately upon the arrival of fruits or vegetables from the countries specified in the quarantine at the port of first arrival the permittee or his agent shall submit a notice in duplicate to the Secretary of Agriculture, through the collector of customs, on forms provided for that purpose, stating the number of the permit, the kinds of fruits or vegetables, the quantity or the number of crates or other containers included in the shipment, the country or locality where grown,

[1] See list of current quarantines and other restrictive orders and miscellaneous regulations, obtainable on request from the Bureau of Entomology and Plant Quarantine.

the date of arrival, the name of the vessel, the name and number, if any, of the dock where the fruits or vegetables are to be unloaded, and the name of the importer or broker at the port of first arrival, or, if by rail, the name of the railroad, the car numbers, and the terminal where the fruits or vegetables are to be unloaded.

Permits may be revoked and other permits refused if the permittee or his agent fails to submit the notice of arrival or gives a false notice or in any other way violates the quarantine.

REGULATION 6—INSPECTION AND DISINFECTION OF IMPORTATIONS OF FRUITS AND VEGETABLES

All importations of fruits or vegetables shall be subject, as a condition of entry, to such inspection or disinfection, or both, at the port of first arrival as shall be required by the inspector of the Department of Agriculture, and shall be subject to reinspection at destination at the option of said department.

Should any shipment of fruits or vegetables be found to be so infested with fruit flies or other dangerous pests that in the judgment of the inspector of the Department of Agriculture it can not be cleaned by disinfection or treatment, or to contain leaves, twigs, or other portions of plants as packing or otherwise, the entire shipment may be refused entry.

No crate, box, hamper, or other container of fruits or vegetables, or fruits and vegetables in bulk, shall be removed from the port of first arrival unless and until a written notice is given to the collector of customs by the inspector of the United States Department of Agriculture that the products have been inspected and found to be free from infestation and from plants or portions of plants used as packing or otherwise: *Provided*, That the requirements under these regulations with respect to the entry of foreign fruits and vegetables into any State for local consumption shall not be a bar to the enforcement of such additional safeguards as may be deemed necessary by the officials of such States.

All charges for storage, cartage, and labor incident to inspection and disinfection, other than the services of the inspector, shall be paid by the importer.

REGULATION 7—INSPECTION OF BAGGAGE AND CARGO ON THE DOCK

Inspectors of the United States Department of Agriculture are authorized to cooperate with the customs inspectors in the examination of all baggage or other personal belongings of passengers or members of crews of vessels or other carriers whenever such examination is deemed necessary for the purpose of enforcing the provisions of this quarantine with respect to the entry of any prohibited or restricted fruits or vegetables or plants or portions of plants which may be contained in the baggage or other belongings of such persons.

The above rules and regulations shall be effective on and after December 1, 1936, and shall supersede the rules and regulations governing the importation of fruits and vegetables into the United States which were promulgated October 27, 1932, as amended July 25, 1933.

Done at the city of Washington this 14th day of November 1936.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] R. G. TUGWELL,
Acting Secretary of Agriculture.

[F. R. Doc. 3393—Filed, November 16, 1936; 11:09 a. m.]

APPENDIX A

The information formerly assembled in this appendix is now incorporated in a circular issued from time to time by the Bureau of Entomology and Plant Quarantine, entitled "List of current quarantines and other restrictive orders and miscellaneous regulations", and obtainable on request.

BEPQ—Q-64 Revision of Regulation 7
Effective November 16, 1936

MODIFICATION OF MEXICAN FRUIT WORM QUARANTINE REGULATIONS

INTRODUCTORY NOTE

The following revision of regulation 7 of the Mexican fruit worm quarantine authorizes the Chief of the Bureau of Entomology and Plant Quarantine to make such modifications as may be considered necessary with respect to the duration and dates of commencement and termination of the host-free period within the regulated area.

LEE A. STRONG,
Chief, Bureau of Entomology and Plant Quarantine.

AMENDMENT NO. 2 TO REVISED RULES AND REGULATIONS SUPPLEMENTAL TO NOTICE OF QUARANTINE NO. 64

[Approved Nov. 14, 1936; Effective Nov. 16, 1936]

Under authority conferred by the Plant Quarantine Act of August 20, 1912 (37 Stat. 315), as amended, it is ordered that regulation 7 of the revised rules and regulations supplemental to Notice of Quarantine No. 64, on account of the Mexican fruit worm, which were promulgated on August 12, 1932, be and the same is hereby amended to read as follows:

REGULATION 7—CONDITIONS REQUIRED IN THE REGULATED AREAS

The interstate movement of grapefruit, oranges, and other restricted citrus fruit from the regulated areas under permit issued by the United States Department of Agriculture will be conditioned on the State of Texas providing for and enforcing the following control measures in manner and by method approved by the United States Department of Agriculture, namely:

Section A—Host-Free Period

A host-free period shall be maintained each year beginning in the month of March and continuing for seven months, subject to such modification as to duration and dates of commencement and termination as may be authorized by the Chief of the Bureau of Entomology and Plant Quarantine on presentation of evidence that such modification is necessary or desirable and does not involve increase of risk of propagating the Mexican fruit worm.

Prior to the commencement of such host-free period each year, all citrus fruit except lemons and sour limes shall be removed from the trees for shipment, storage, or sale, and all other host fruits shall be destroyed either following removal from the trees or by destruction of the trees themselves.

No host-fruits shall be permitted to develop in groves or to exist elsewhere within a regulated area at any time during such host-free period except as follows: (1) Citrus fruits developing on the trees in such stages of immaturity that, in the judgment of an inspector, they are not susceptible to infestation by the Mexican fruit worm; and (2) citrus fruits in storage, or on retail sale for immediate consumption, stored, or maintained under such conditions and for such periods of time as shall be approved by an inspector.

Section B—Inspection

A system of inspection shall be carried on throughout the year to provide for the efficient enforcement of sections A and C of this regulation and for the prompt discovery of any infestations which occur and for the enforcement of such conditions in and around citrus groves and packing and preserving plants as shall prevent the possibility of fruit worm development therein.

Section C—Infested Zones

Upon the determination of a Mexican fruit-worm infestation within a regulated area, an infested zone shall be designated by the State of Texas in a manner approved by the United States Department of Agriculture and all host fruits in susceptible stages of maturity produced within such zone

and remaining in the regulated area shall be destroyed or processed in such a manner as to render them free from infestation.

This amendment shall be effective on and after November 16, 1936.

Done at the city of Washington this 14th day of November 1936.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] R. G. TUGWELL,
Acting Secretary of Agriculture.

[F. R. Doc. 3394—Filed, November 16, 1936; 11:09 a. m.]

DEPARTMENT OF LABOR.

PUBLIC NOTICE OF HEARING IN THE MATTER OF DETERMINING THE PREVAILING MINIMUM WAGES IN THE MEN'S WORK GARMENT INDUSTRY

NOVEMBER 16, 1936.

Notice is hereby given that a hearing will be held at 10:30 a. m., Friday, November 20, 1936, in room 4217, Department of Labor Building, 14th Street and Constitution Avenue, Washington, District of Columbia, before the Public Contracts Board of the Department of Labor, in the matter of determining the prevailing minimum wages for public contracts in the men's work garment industry.

Opportunity will at that time be given to all interested persons to appear and present evidence as to prevailing minimum wages in said industry. This proceeding is to assist the Secretary of Labor in determining such wages, in accordance with the provisions of Section 1 (b) of the Act of June 30, 1936 (Public, No. 846, 74th Cong.), commonly known as the Walsh-Healey Public Contracts Act.

By direction of the Secretary of Labor.

[SEAL] GERARD D. REILLY,
Acting Administrator Public Contracts Act.

[F. R. Doc. 3417—Filed, November 16, 1936; 3:49 p. m.]

FEDERAL DEPOSIT INSURANCE CORPORATION.

REGULATION III—RELATING TO ADVERTISING BY INSURED BANKS

AS AMENDED OCTOBER 26, 1936, TO BE EFFECTIVE NOVEMBER 20, 1936, AND SUPERSEDING REGULATION III OF OCTOBER 11, 1935

Scope of Regulation

This regulation prescribes the requirements with regard to the official signs insured banks must display and the requirements with regard to the official advertising statement insured banks must include in advertisements relating to deposits. It also prescribes an approved emblem and an approved short title which insured banks may use at their option. This regulation imposes no limitations on other proper advertising of insurance of deposits by insured banks.

SECTION 1—STATUTORY PROVISIONS

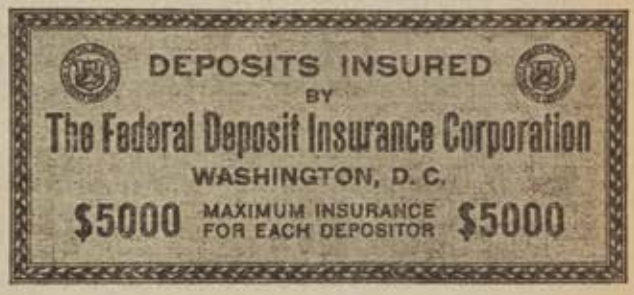
Paragraph (2), subsection (v), Section 12B of the Federal Reserve Act, as amended, provides as follows:

Every insured bank shall display at each place of business maintained by it a sign or signs, and shall include in advertisements relating to deposits a statement to the effect that its deposits are insured by the Corporation. The board of directors shall prescribe by regulation the forms of such signs and the manner of display and the substance of such statements and the manner of use. For each day an insured bank continues to violate any provision of this paragraph or any lawful provision of said regulations, it shall be subject to a penalty of not more than $100, recoverable by the Corporation for its use.

SECTION 2—MANDATORY REQUIREMENTS WITH REGARD TO THE OFFICIAL SIGNS AND THEIR DISPLAY

SUBSECTION (a). Each insured bank shall continuously display on and after October 11, 1935, for so long as it continues to be an insured bank, an official sign as hereinafter prescribed at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches: *Provided*, That no bank becoming an insured bank after October 11, 1935, shall be required to display such official signs until 21 days after its first day of operation as an insured bank. The official signs may be displayed by any insured bank prior to the date display is required.

SUBSECTION (b). The official sign referred to in subsection (a) of this Section shall be seven inches by three inches in size, made of metal, furnished to banks by this Corporation only, and of the following design:



The corporation shall furnish to banks an order blank for use in procuring the official signs. Any bank which promptly, after receipt of the order blank, fills it in, executes it, and properly directs and forwards it to the Federal Deposit Insurance Corporation, Washington, D. C., shall not be deemed to have violated this regulation on account of not displaying an official sign or signs, unless the bank shall omit to display such official sign or signs after same have been tendered to the bank through the instrumentality of the United States mail or otherwise.

SUBSECTION (c). Where two or more banks receive deposits in the same office or offices, each bank operating as an insured bank and doing business in such office or offices is forbidden on and after October 11, 1935, or, in the case of a bank becoming an insured bank after October 11, 1935, after its first day of operation as an insured bank, to receive deposits at any window or station where any noninsured bank receives deposits.

SUBSECTION (d). Pursuant to written notice from the Corporation given to insured banks at least thirty days prior to any date the Corporation specifies, provided on such date special circumstances exist, with regard to particular banks, making a change in the wording of the official signs to be used desirable, each insured bank receiving such notice shall on and after the date specified in such notice change its official sign or signs in accordance with the requirements of this Corporation.

SECTION 3—MANDATORY REQUIREMENTS WITH REGARD TO THE OFFICIAL ADVERTISING STATEMENT AND MANNER OF USE

SUBSECTION (a). Each insured bank shall include the official advertising statement, prescribed in subsection (b) of this Section, in advertisements issued or caused to be issued by it after November 20, 1936, of the types enumerated in subsection (c) of this Section as being of the class in which the official statement is required to be included.

No bank which becomes an insured bank after October 26, 1936, is required to include the official advertising statement in such advertisements until 60 days after its first day of operation as an insured bank.

In cases where, in the opinion of the Board of Directors of the Federal Deposit Insurance Corporation, undue hardship would result by reason of the requirements of this subsection becoming operative as to a particular bank on the date fixed herein, the Board of Directors may grant an extension of time applicable to the particular bank affected, upon written application of the bank setting forth the facts.

In cases where advertising copy not including the official advertising statement is on hand on the date the requirements of this subsection become operative, the insured bank may

cause the official advertising statement to be included by use of a rubber stamp or otherwise.

SUBSECTION (b). The official advertising statement shall be in substance as follows: "Member of the Federal Deposit Insurance Corporation." However, the word "The" or the words "Of the" may be omitted. Further, the words "This bank is a" or the words "This institution is a" or the name of the insured bank followed by the words "is a" may be added before the word "Member."

SUBSECTION (c). The following is an enumeration of the types of advertisements which when issued or caused to be issued by an insured bank, shall, in accordance with the requirements of subsection (a) of this Section, include the official advertising statement:

1. Statements of condition and reports of condition of an insured bank *except* those required to be published by State or Federal law.
2. All calendars.
3. Institutional advertisements published in a newspaper, magazine, or other periodical, bill board advertisement, posters, street car displays, signs, plates, pamphlets, circular letters, leaflets, novelty and specialty advertisements, pay roll envelopes, display advertisements in directories such as telephone, bank, and city directories, and advertisements made by radio or reproduced on the picture screen in theaters; *Provided*, that of the types of advertisements listed in this paragraph the following shall be exempted from the requirement of including the official advertising statement:

Exemptions:

(aa) Bank supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, deposit pass books, certificates of deposit, etc.

(bb) Signs or plates in the banking offices or attached to the building or buildings in which the banking offices are located.

(cc) Listings in directories whether in heavy or other type.

(dd) Advertisements not setting forth the name of the insured bank.

(ee) Advertisements not containing any advertising relating to the insured bank in addition to any or all of the following, its name, telephone number, address, announcement of membership in the Federal Reserve System, and subject matter specifically excluded under exemptions (aa) through (oo).

(ff) Advertisements relating to the making of loans by the bank or loan services.

(gg) Advertisements relating to safe keeping box business or services.

(hh) Advertisements relating to trust business or trust department services.

(ii) Advertisements relating to real estate business or services.

(jj) Advertisements relating to armoured car services.

(kk) Advertisements relating to service charges or analysis charges.

(ll) Advertisements relating to securities business or securities department services.

(mm) Display advertisements in bank directory on a page on which there are bank listings whether in heavy or other type, provided the name of the insured bank appears on some page of the listings in the directory, and provided there appears on each page of the directory containing listings a symbol or other descriptive matter indicating the banks which are members of the Federal Deposit Insurance Corporation.

(nn) Advertisements relating to travel department business, including traveler's checks on which the bank issuing or causing to be issued the advertisement is *not* primarily liable.

(oo) Joint or group advertisements of banking service where the names of insured and noninsured banks are listed and form a part of such advertisements.

SUBSECTION (d). Insured banks are not required to include the official advertising statement in any type of advertisements other than those enumerated in subsection (c) as being of the class in which such statement is required to be included.

SUBSECTION (e). Where an insured bank has billboard advertisements outstanding, not excluded under exemptions (aa) through (oo) in Paragraph 3, Subsection (c), Section 3, and has direct control either by possession or under the terms of a contract of such advertisements, it shall, if it can do so consistently with its contractual obligations, cause the official advertising statement to be included therein at such time as it would have been required to include the official advertising statement had the advertisement been newly issued rather than previously outstanding.

SECTION 4—APPROVED EMBLEM AND APPROVED SHORT TITLE WHICH INSURED BANKS MAY USE AT THEIR OPTION

SUBSECTION (a). The emblem reproduced below is hereby approved for the use of insured banks.

SUBSECTION (b). The following short title is hereby approved for use of insured banks on signs or plates attached to the outside of the bank building: "Member of F. D. I. C."

SUBSECTION (c). No insured bank is required to use the emblem or short title to any extent whatsoever. However, if any insured bank desires to use the emblem, it may do so in any of its advertisements and on any of its bank supplies. Since the approved emblem contains the official advertising statement in the outside circle, its use in the type of advertisements listed in subsection (c), Section 3 of this regulation will satisfy the mandatory requirements of that Section. The short title cannot be substituted for the official advertising statement in the types of advertisements required to include the latter.

Any insured bank may, in addition to the requirements of this regulation, use any proper advertising of insurance of its deposits. For example, as an addition to the official advertising statement, any insured bank may, at its option, use the following in any of its advertisements:

Deposits in this bank are insured with maximum insurance of $5,000 for each depositor.

Further, in the case of display signs in the banking offices which, under the provisions of this regulation, are not required to include the official advertising statement, any insured bank may use, for example, any of the following:

1. "The Federal Deposit Insurance Corporation insures deposits in this bank with $5,000 maximum insurance for each depositor.
2. "Deposits in this bank are insured by the Federal Deposit Insurance Corporation with $5,000 maximum insurance for each depositor."
3. Electric sign or other display reproductions of the official sign.

SECTION 5—PENALTIES

No bank will violate any provision of paragraph (2), subsection (v), Section 12B of the Federal Reserve Act, as amended, or any provisions of this regulation if it complies with the provisions of Sections 2 and 3 of this regulation. No penalty will be imposed for any violation of the provisions of this regulation until the bank has been given an

opportunity to be heard before the Board of Directors of this Corporation.

[Adopted by the Board of Directors at a regularly held meeting on October 26, 1936.]

[SEAL] LEO T. CROWLEY, *Chairman.*

[F. R. Doc. 3419—Filed, November 17, 1936; 9:56 a. m.]

INTERSTATE COMMERCE COMMISSION.

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 7th day of November A. D. 1936.

[No. MC 50989]

APPLICATION OF DANIEL EVERETTE TRACY FOR AUTHORITY TO OPERATE AS A CONTRACT CARRIER

In the Matter of the Application of Daniel Everette Tracy, Individual, Doing Business as D. E. Tracy Trucking, of 4144 Vernon Avenue, St. Louis Park, Minn., for a Permit (Form BMC 10, New Operation), Authorizing Operation as a Contract Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the States of Minnesota, North Dakota, Wisconsin, and Iowa Over the Following Routes

Route No. 1.—Between New Prague, Minn., and Grand Forks, N. Dak., via Fargo, N. Dak.
Route No. 2.—Between New Prague, Minn., and Cameron, Wis., via Minneapolis, Minn.
Route No. 3.—Between New Prague, Minn., and Osseo, Wis., via Eau Claire, Wis.
Route No. 4.—Between New Prague, Minn., and Mason City, Iowa.

A more detailed statement of route or routes (or territory) is contained in said application, copies of which are on file and may be inspected at the office of the Interstate Commerce Commission, Washington, D. C., or offices of the boards, commissions, or officials of the States involved in this application.

It appearing, That the above-entitled matter is one which the Commission is authorized by the Motor Carrier Act, 1935, to refer to an examiner:

It is ordered, That the above-entitled matter be, and it is hereby, referred to Examiner W. A. Maidens for hearing on the 4th day of December A. D. 1936, at 10 o'clock a. m. (standard time), at the Minnesota Railroad & Warehouse Commission, St. Paul, Minn., and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

It is further ordered, That notice of this proceeding be duly given;

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within 10 days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, division 5.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

[F. R. Doc. 3402—Filed, November 16, 1936; 12:31 p. m.]

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 7th day of November A. D. 1936.

[No. MC 86060]

APPLICATION OF WELLINGTON WELLS WATKINS FOR AUTHORITY TO OPERATE AS A CONTRACT CARRIER

In the Matter of the Application of Wellington Wells Watkins, Individual, Doing Business as Economy Transport, of 6414 Kimbark Avenue, Chicago, Ill., for a Permit (Form BMC 10, New Operation), Authorizing Operation as a Contract Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the States of Indiana, Ohio, Illinois, Kentucky, and Missouri, Over the Following Routes

Route No. 1.—Between Chicago, Ill., and Toledo, Ohio.
Route No. 2.—Between Chicago, Ill., and Cleveland, Ohio.
Route No. 3.—Between Chicago, Ill., and Columbus, Ohio.
Route No. 4.—Between Chicago, Ill., and Dayton, Ohio.
Route No. 5.—Between Chicago, Ill., and Cincinnati, Ohio.
Route No. 6.—Between Chicago, Ill., and Louisville, Ky.
Route No. 7.—Between Chicago, Ill., and Evansville, Ind.
Route No. 8.—Between Chicago, Ill., and Youngstown, Ohio.
Route No. 9.—Between Chicago, Ill., and Indianapolis, Ind.
Route No. 10.—Between Chicago, Ill., and St. Louis, Mo.

A more detailed statement of route or routes (or territory) is contained in said application, copies of which are on file and may be inspected at the office of the Interstate Commerce Commission, Washington, D. C., or offices of the boards, commissions, or officials of the States involved in this application.

It appearing, That the above-entitled mater is one which the Commission is authorized by the Motor Carrier Act, 1935, to refer to an examiner:

It is ordered, That the above-entitled matter be, and it is hereby, referred to Examiner W. A. Maidens for hearing on the 1st day of December A. D. 1936, at 10 o'clock a. m. (standard time), at the Sherman Hotel, Chicago, Ill., and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

It is further ordered, That notice of this proceeding be duly given;

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within 10 days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, division 5.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

[F. R. Doc. 3403—Filed, November 16, 1936; 12:31 p. m.]

[Fourth Section Application No. 16607]

LIME FROM CENTRAL TO TRUNK LINES AND NEW ENGLAND TERRITORIES

NOVEMBER 14, 1936.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act,

Filed by: B. T. Jones, Agent.
Commodity involved: Lime, common, hydrated, quick, or slaked, in carloads, minimum weights 30,000 and 50,000 pounds.
From: Producing points in Central territory.
To: Points in Trunk Line and New England territories.
Grounds for relief: To maintain grouping.

Any interested party desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice; otherwise the Commission may proceed to investigate

and determine the matters involved in such application without further or formal hearing.

By the Commission, division 2.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

[F. R. Doc. 3405—Filed, November 16, 1936; 12:31 p. m.]

[Fourth Section Application No. 16608]

VEGETABLES FROM NORTH CAROLINA AND VIRGINIA

NOVEMBER 14, 1936.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act,

Filed by: J. E. Tilford, Agent.
Commodities involved: Vegetables, including potatoes.
From: Points in North Carolina and Virginia.
To: Points in Official and Southern Classification territories.
Grounds for relief: To maintain grouping.

Any interested party desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice; otherwise the Commission may proceed to investigate and determine the matters involved in such application without further or formal hearing.

By the Commission, division 2.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

[F. R. Doc. 3406—Filed, November 16, 1936; 12:32 p. m.]

[Fourth Section Application No. 16609]

GRAIN AND GRAIN PRODUCTS TO THE SOUTH

NOVEMBER 14, 1936.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act,

Filed by: J. E. Tilford, Agent.
Commodities involved: Grain, grain products, including mixed feed.
From: Ohio and Mississippi River crossings.
To: Points in the South.
Grounds for relief: Carrier competition.

Any interested party desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice; otherwise the Commission may proceed to investigate and determine the matters involved in such application without further or formal hearing.

By the Commission, division 2.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

[F. R. Doc. 3407—Filed, November 16, 1936; 12:32 p. m.]

[Fourth Section Application No. 16610]

CANNED GOODS FROM MICHIGAN

NOVEMBER 16, 1936.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act,

Filed by: B. T. Jones, Agent, pursuant to Fourth Section Order No. 9800.
Commodities involved: Canned goods, and other articles, in carloads.
From: Points in Michigan.
To: Points in the South.
Grounds for relief: Carrier competition.

Any interested party desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice; otherwise the Commission may proceed to investigate and determine the matters involved in such application without further or formal hearing.

By the Commission, division 2.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

[F. R. Doc. 3408—Filed, November 16, 1936; 12:32 p. m.]

RURAL ELECTRIFICATION ADMINISTRATION.

[Administrative Order No. 37]

ALLOCATION OF FUNDS FOR LOANS

NOVEMBER 16, 1936.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, I hereby allocate, from the sums authorized by said Act, funds for Loans for the projects and in the amounts as set forth in the following schedule:

Project Designation:	*Amount*
Minnesota 4 Lake (Additional)	$40,000

MORRIS L. COOKE, *Administrator.*

[F. R. Doc. 3418—Filed, November 17, 1936; 9:39 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 14th day of November A. D. 1936.

IN THE MATTER OF AN OFFERING SHEET OF A ROYALTY INTEREST IN THE OHIO-LUPTON FARM, FILED ON NOVEMBER 5, 1936, BY JAMES M. JOHNSON, RESPONDENT

CONSENT TO WITHDRAWAL OF FILING OF OFFERING SHEET AND ORDER TERMINATING PROCEEDING

The Securities and Exchange Commission, having been informed by the respondent that no sales of any of the interests covered by the offering sheet described in the title hereof have been made, and finding, upon the basis of such information, that the withdrawal of the filing of the said offering sheet, requested by such respondent, will be consistent with the public interest and the protection of investors, consents to the withdrawal of such filing but not to the removal of the said offering sheet, or any papers with reference thereto, from the files of the Commission; and

It is ordered, that the Suspension Order, Order for Hearing, and Order Designating a Trial Examiner, heretofore entered in this proceeding, be, and the same are hereby, revoked and the said proceeding terminated.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3410—Filed, November 16, 1936; 1:02 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 14th day of November A. D. 1936.

[File No. 31-375]

IN THE MATTER OF THE APPLICATION OF MIDDLE WEST UTILITIES COMPANY OF CANADA, LIMITED

ORDER POSTPONING HEARING

An order having been issued by the Commission on the 30th day of October 1936, setting November 20th, 1936, as the date at which a hearing shall be held on the application of Middle West Utilities Company of Canada, Limited, pursuant to Section 3 of the Public Utility Holding Company Act of 1935, for exemption from the provisions of said Act, at the Securities and Exchange Building, 1778 Pennsylvania Ave-

nue NW., Washington, D. C., and designating Charles S. Moore, an officer of the Commission, to preside at such hearing, and

Counsel for Middle West Utilities Company of Canada, Limited, having requested that such hearing be postponed for at least 15 days from said date,

It is ordered, that such hearing be postponed until 10:00 A. M. in the forenoon of December 14, 1936, at the same place.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3412—Filed, November 16, 1936; 1:02 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 12th day of November A. D. 1936.

[File No. 2-843]

IN THE MATTER OF REGISTRATION STATEMENT OF JOHN L. ETHERIDGE (KETTLEMAN HILLS SYNDICATE OF NORTH DOME ROYALTIES)

ORDER FIXING TIME AND PLACE OF HEARING UNDER SECTION 8 (D) OF THE SECURITIES ACT OF 1933, AS AMENDED, AND DESIGNATING OFFICER TO TAKE EVIDENCE

It appearing to the Commission that there are reasonable grounds for believing that the registration statement filed by John L. Etheridge (Kettleman Hills Syndicate of North Dome Royalties) under the Securities Act of 1933, as amended, includes untrue statements of material facts and omits to state material facts required to be stated therein and material facts necessary to make the statements therein not misleading.

It is ordered, that a hearing be held, pursuant to the provisions of Section 8 (d) of said Act as amended, such hearing to be convened on November 20, 1936, at 2 o'clock in the afternoon, in Room 1101, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue NW., Washington, D. C., and to continue thereafter at such time and place as the officer hereinafter designated may determine; and

It is further ordered, that Robert P. Reeder, an officer of the Commission, be and he hereby is, designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

Upon the completion of testimony in this matter, the officer is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3411—Filed, November 16, 1936; 1:02 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 7th day of November A. D. 1936.

[File No. 2-2561]

IN THE MATTER OF REGISTRATION STATEMENT OF SOUTH UMPQUA MINING COMPANY

ORDER FIXING TIME AND PLACE OF HEARING UNDER SECTION 8 (D) OF THE SECURITIES ACT OF 1933, AS AMENDED, AND DESIGNATING OFFICER TO TAKE EVIDENCE

It appearing to the Commission that there are reasonable grounds for believing that the registration statement filed by South Umpqua Mining Company under the Securities Act of 1933, as amended, includes untrue statements of material facts and omits to state material facts required to be stated therein and material facts necessary to make the statements therein not misleading.

It is ordered, that a hearing be held, pursuant to the provisions of Section 8 (d) of said Act as amended, such hearing to be convened on November 20, 1936, at 11 o'clock in the forenoon, in Room 1103, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue NW., Washington, D. C., and to continue thereafter at such time and place as the officer hereinafter designated may determine; and

It is further ordered, that Allen MacCullen, an officer of the Commission, be, and he hereby is, designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

Upon the completion of testimony in this matter, the officer is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3413—Filed, November 16, 1936; 1:02 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 13th day of November A. D. 1936.

IN THE MATTER OF AN OFFERING SHEET OF A ROYALTY INTEREST IN THE WILLIAMSON FARM, FILED ON NOVEMBER 10, 1936, BY JAMES M. JOHNSON, RESPONDENT

SUSPENSION ORDER, ORDER FOR HEARING (UNDER RULE 340 (A)), AND ORDER DESIGNATING TRIAL EXAMINER

The Securities and Exchange Commission, having reasonable grounds to believe, and therefore alleging, that the offering sheet described in the title hereof and filed by the respondent named therein is incomplete or inaccurate in the following material respects, to wit:

1. In that Exhibit A is undated;

2. In that Item 7 of Division II has not been answered as to the tract involved;

3. In that Item 8 of Division II does not give the answer required as to wells on the tract, or as to those wells nearest to the tract;

It is ordered, pursuant to Rule 340 (a) of the Commission's General Rules and Regulations under the Securities Act of 1933, as amended, that the effectiveness of the filing of said offering sheet be, and hereby is, suspended until the 12th day of December 1936 that an opportunity for hearing be given to the said respondent for the purpose of determining the material completeness or accuracy of the said offering sheet in the respects in which it is herein alleged to be incomplete or inaccurate, and whether the said order of suspension shall be revoked or continued; and

It is further ordered, that Charles S. Lobingier, an officer of the Commission be, and hereby is, designated as trial examiner to preside at such hearing, to continue or adjourn the said hearing from time to time, to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, consider any amendments to said offering sheet as may be filed prior to the conclusion of the hearing, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law; and

It is further ordered, that the taking of testimony in this proceeding commence on the 27th day of November 1936 at 10:00 o'clock in the forenoon, at the office of the Secu-

rities and Exchange Commission, 18th Street and Pennsylvania Avenue, Washington, D. C., and continue thereafter at such times and places as said examiner may designate.

Upon the completion of testimony in this matter the examiner is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3414—Filed, November 16, 1936; 1:03 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 12th day of November A. D. 1936.

IN THE MATTER OF AN OFFERING SHEET OF AN OVERRIDING ROYALTY INTEREST IN THE BILGRAD-MATTIE FORNEY FARM, FILED ON OCTOBER 27, 1936, BY BILGRAD OIL COMPANY, RESPONDENT

ORDER TERMINATING PROCEEDING AFTER AMENDMENT

The Securities and Exchange Commission, finding that the offering sheet filed with the Commission, which is the subject of this proceeding, has been amended, so far as necessary, in accordance with the Suspension Order previously entered in this proceeding;

It is ordered, pursuant to Rule 341 (d) of the Commission's General Rules and Regulations under the Securities Act of 1933, as amended, that the amendment received at the office of the Commission on November 7, 1936, be effective as of November 7, 1936; and

It is further ordered, that the Suspension Order, Order for Hearing and Order Designating a Trial Examiner, heretofore entered in this proceeding, be and the same hereby are, revoked and the said proceeding terminated.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3415—Filed, November 16, 1936; 1:03 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 11th day of November A. D. 1936.

[File No. 2-2289]

IN THE MATTER OF INDIANA ASPHALT PAVING COMPANY, INC.

ORDER CONSENTING TO FILING OF AMENDMENTS AND DECLARING REGISTRATION STATEMENT AMENDED IN ACCORDANCE WITH REFUSAL ORDER

This matter coming on to be heard by the Commission upon the registration statement of Indiana Asphalt Paving Company, Inc., of Indianapolis, Indiana, originally filed June 24, 1936, and upon the amendments of said registration statement of August 13, September 8 and 15, October 7, 22, and 27, and November 4, 1936, and the Commission being now fully advised in the premises,

It is declared, that the amendments filed August 13, September 8 and 15, October 7, 22, and 27, and November 4, 1936, amend the statement in accordance with the order issued July 11, 1936, refusing to permit the registration statement to become effective, and

It is ordered, that the Commission hereby gives its consent to the filing of such amendments as a part of said registration statement.

Said Registrant is hereby notified that the records of the Commission show November 11, 1936, as the effective date of said Registration Statement.

Attention is directed to Rules 800 (b) and 970 of the General Rules and Regulations relating, respectively, to the requirements for the filing of twenty copies of the actual prospectus used and statement of price at which securities were actually offered.

Attention shall be directed to the provisions of Section 23, Securities Act of 1933, which follows: "Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing provisions of this section."

By direction of the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3416—Filed, November 16, 1936; 1:03 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 16th day of November A. D. 1936.

[File No. 30-15]

IN THE MATTER OF THE APPLICATION OF THE NEVADA-CALIFORNIA ELECTRIC CORPORATION

NOTICE OF HEARING AND ORDER DESIGNATING TRIAL EXAMINER

An application having been duly filed with this Commission, by The Nevada-California Electric Corporation pursuant to Section 5 (d) of the Public Utility Holding Company Act of 1935, for an order declaring that said applicant has ceased to be a holding company,

It is ordered that such matter be set down for hearing on November 28, 1936, at 10:00 o'clock in the forenoon of that day, at Room 1101, Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C.; and

Notice of such hearing is hereby given to said party and to any interested State, State commission, State securities commission, municipality, and any other political subdivision of a State, and to any representative of interested consumers or security holders, and any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before November 23, 1936.

It is further ordered, that Charles S. Moore, an officer of the Commission, be and he hereby is designated to preside at such hearing, and authorized to adjourn said hearing from time to time, to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 3420—Filed, November 17, 1936; 12:34 p. m.]